

**NOMINATION OF KENNETH L. WAINSTEIN
TO BE UNDER SECRETARY
FOR INTELLIGENCE AND ANALYSIS,
U.S. DEPARTMENT OF HOMELAND SECURITY**

HEARING
BEFORE THE
SELECT COMMITTEE ON INTELLIGENCE
OF THE
UNITED STATES SENATE
ONE HUNDRED SEVENTEENTH CONGRESS
SECOND SESSION

—————
JANUARY 12, 2022
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Printed for the use of the Select Committee on Intelligence



Available via the World Wide Web: <http://www.govinfo.gov>

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U.S. GOVERNMENT PUBLISHING OFFICE

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[Established by S. Res. 400, 94th Cong., 2d Sess.]

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JANUARY 12, 2022

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**NOMINATION OF KENNETH L. WAINSTEIN
TO BE UNDER SECRETARY
FOR INTELLIGENCE AND ANALYSIS,
U.S. DEPARTMENT OF HOMELAND SECURITY**

WEDNESDAY, JANUARY 12, 2022

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC.

The Committee met, pursuant to notice, at 2:03 p.m., in Room SD-50 of the Dirksen Senate Office Building, Hon. Mark R. Warner (Chairman of the Committee) presiding.

Present: Senators Warner, Rubio, Wyden, Heinrich, King (via WebEx), Casey (via WebEx), Gillibrand (via WebEx), Blunt, Cornyn, and Sasse.

**OPENING STATEMENT OF HON. MARK R. WARNER,
A U.S. SENATOR FROM VIRGINIA**

Chairman WARNER. I call this hearing to order.

Welcome, Mr. Wainstein. It's great to see you. Welcome as well to Elizabeth and three of your daughters, Mackie, Cecily, and Natalie. Mackie had the good sense to be an intern for the Committee last summer and we are grateful for her service.

I understand your daughter, Ellie, who's at Berkeley Law School, is watching remotely. And I would ask, Ken, that you would give us some evidentiary proof that she did actually tune in for this couple of hours. And hopefully, if she's watching now, she's appropriately embarrassed. So, we'll see in the aftermath.

Before we begin formally, though, I do want to commend you on your excellent judgment as evidenced by both your attending UVA and living in the Commonwealth. I will question your choice of law school, though.

But congratulations on your nomination to serve as the Under Secretary for Intelligence and Analysis, or I&A, at the Department of Homeland Security. This position sits at a critical juncture between the analytic work of the Intelligence Community and the information-sharing role of the Department of Homeland Security. If confirmed, your job will be to receive and analyze intelligence and law enforcement information relating to the homeland security and to ensure its prompt dissemination throughout the Department, as well as to your partners at the Federal, state, local, and tribal departments and agencies.

You come to this hearing with a strong background as an intelligence and law enforcement professional who has faithfully served

our country throughout your career as a Federal prosecutor, at the highest levels of the FBI, as General Counsel both from Chief of Staff to Director Mueller, as a U.S. Attorney for the District, and the first-ever Assistant Attorney General of the DOJ's National Security Division. And as Homeland Security Adviser to President Bush. I mean, you've had virtually every job across the justice and homeland security and intel world.

So, the fact that after a decade in private practice, you've made the admirable decision to return to public service, I think it is important. And as I said in our conversation before this, your appointment comes at a pivotal moment and it's going to clearly have some challenges.

While the I&A mission is defined, it continues to evolve and mature since its creation in the aftermath of 9/11. And I think for many of us on the Committee, there's a sense that the I&A, at least recently, has been a bit unfocused and stuck between its dual missions: national intelligence and departmental priorities.

You have some Members, not just Senator Wyden, but me as well, who were very unhappy with the I&A's operations in Portland in 2020. And then we were disappointed that the I&A provided next to no warning about what was to come on January 6th. We just had the one year anniversary of that date. And the recognition of what domestic violent extremists can do from either end of the political spectrum, I believe, needs to be a focus of some of your work.

Obviously, at the same time, particularly if they're domestic violent extremists, the First Amendment protects Americans' right to free speech and nonviolent peaceful protest. And obviously, part of your role would be to defend the Constitution and those First Amendment rights. As head of DHS intelligence operations, you'll be squarely at the center of those two imperatives, both protecting our country and protecting the Constitution. And I'd like to hear today a little bit how you hope to navigate that important work while not politicizing I&A's activities.

And obviously, when I submit for the record in a moment the kind of Who's Who of law enforcement and intelligence officials who are supporting your nomination from both political parties, I think that is a good endorsement that you're the right guy at the right time.

Thank you for appearing before the Committee this afternoon. I look forward to your testimony.

I now recognize the Vice Chairman.

**OPENING STATEMENT OF HON. MARCO RUBIO,
A U.S. SENATOR FROM FLORIDA**

Vice Chairman RUBIO. Thank you, Mr. Chairman.

Thank you, Mr. Wainstein, for being here and for your willingness to serve as the Under Secretary for Intelligence and Analysis of the Department of Homeland Security. I think the Chairman has gone through your extensive public service record, the landscape.

We have all the same challenges that we had when you last were in public service. And now we've got a few ones that have emerged that are relatively new in scale and scope, not the least of which, of course, is the threat to the United States from the Chinese Com-

munist Party and, in particular, their plan—which is now, I think, abundantly clear—to work both through licit and illicit means to dominate global emerging technologies, to displace the United States and reshape the rules-based international order in ways that benefit them.

So, I'll be very interested to hear your views on China and more importantly on how they would inform your approach to intelligence and analysis should you be confirmed.

I also would hope to hear a little bit about how you'll ensure that DHS Intelligence and Analysis isn't being used or even reasonably perceived—which is in many ways as important—perceived to be used by either party or whoever is in power for political purposes under the guise, for example, of pursuing domestic violent extremists. It's a very fine line.

The worst times in the history of our intelligence agencies have been when they were either used or perceived to be used for purposes of political advantage. And this comes at a time in which there's a broader crisis of confidence in institutions in this country. But again, none, I think, has been more damaged over the last few years, rightly or wrongly in many cases, than the Intelligence Community.

And so I think it's more important than ever that we do everything possible to ensure that there's both the perception and the reality that the IC operates beyond the bounds of partisan politics so that both policymakers—but ultimately the American public—can have confidence that their assessments are real. And so those are important points I hope you'll touch upon.

With that, again, thank you for being here. We look forward to hearing your testimony and your answers to our questions.

Chairman WARNER. Thank you, Mr. Vice Chairman. I now ask unanimous consent that letters of support for the nominee be included in the record. I would simply point out, Ken has got letters from a kind of Who's Who across law enforcement and criminal justice leaders, and then his list of supporters from national security and intel. I won't go down the whole list by any means, but for my colleagues and for those who are tuning in, that includes Mike Chertoff, Keith Alexander, Jim Clapper, Saxby Chambliss, Mike Hayden, Bill Evanina, Mike McConnell, Mike Morell, Leon Panetta, Tom Ridge and a host of others. So, very impressive group and I ask these—

Vice Chairman RUBIO. Mr. Chairman, the Chambliss one concerns me deeply, but . . .

Chairman WARNER. I will note this.

Vice Chairman RUBIO. For the record, that's a joke.

Chairman WARNER. The only thing that would be worse is if Burr submitted a letter as well.

Vice Chairman RUBIO. Well, that would be a devastating death blow to the nomination.

Chairman WARNER. So, without objection, I'll submit those letters for the record.

[Letters of support for the Witness follows:]

January 11, 2022

The Honorable Mark Warner
Chairman, United States Senate
Select Committee on Intelligence
703 Hart Senate Office Building
Washington, DC 20510

The Honorable Marco Rubio
Ranking Member, United States Senate
Select Committee on Intelligence
284 Russell Senate Office Building
Washington, DC 20510

The Honorable Gary C. Peters
Chairman, United States Senate
Committee on Homeland Security
and Governmental Affairs
724 Hart Senate Office Building
Washington, DC 20510

The Honorable Rob Portman
Ranking Member, United States Senate
Committee on Homeland Security
and Governmental Affairs
448 Russell Senate Office Building
Washington, DC 20510

Re: Confirmation of Kenneth L. Wainstein to be the Undersecretary for Intelligence and Analysis, U.S. Department of Homeland Security

Dear Chairman Warner, Ranking Member Rubio, Chairman Peters and Ranking Member Portman -

We are former U.S. Department of Justice officials of both political parties who served in every Administration over the last five decades. We write today in strong and enthusiastic support of the nomination of Ken Wainstein to serve as the Undersecretary for Intelligence and Analysis, U.S. Department of Homeland Security. Ken has spent the majority of his professional life in public service and has served with great distinction in a variety of critical roles, including White House Homeland Security Advisor, Assistant Attorney General for the National Security Division, United States Attorney for the District of Columbia, and General Counsel of the FBI, among others. We are unanimous in the belief that he has the requisite experience, expertise, and judgment to serve in this most important position and respectfully urge his prompt confirmation.

As former senior Justice Department officials, we are well positioned to evaluate the qualifications of one of our own to serve as a senior member of the nation's intelligence community. Ken is perfectly suited to deliver, in a non-partisan manner, to state and local law enforcement, and private sector partners, important and sensitive intelligence as well as developing intelligence from those partners for use by the Department of Homeland Security and broader intelligence community. Many of us served alongside Ken, know him personally, and can vouch for his outstanding reputation—both as an extraordinarily effective lawyer and manager and as a person of the highest integrity.

Ken is an exceptional lawyer, intelligence official and public servant. He has a sharp and analytical mind, excellent judgment, and his record of achievement demonstrates he possesses those necessary traits. Ken graduated from the University of Virginia and earned his J.D. from the University of California, Berkeley School of Law. He then served as a law clerk for Judge Thomas Penfield Jackson of the U.S. District Court for the District of Columbia. After his clerkship, Ken

Letter of support for Ken L. Wainstein
January 11, 2022
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joined the Justice Department as an Assistant U.S. Attorney for the Southern District of New York and, in 1992, transferred to the U.S. Attorney's Office for the District of Columbia, where he was lead prosecutor on over a hundred grand jury investigations and more than two dozen significant jury trials and also served as Deputy Chief of the Homicide Section, as Deputy Chief of the Superior Court Division and as Principal Assistant U.S. Attorney.

In May 2004, President Bush nominated, and the Senate unanimously confirmed, Ken as the United States Attorney for the District of Columbia. As the District's chief law enforcement officer, Ken was responsible for overseeing all criminal and civil matters in one of the most significant and largest U.S. Attorneys' Offices in the nation. Before serving as U.S. Attorney, Ken served in senior positions at the FBI, including Chief of Staff to the FBI Director, and General Counsel. In 2006, President Bush once again nominated, and the Senate again unanimously confirmed, Ken to serve as the Justice Department's first Assistant Attorney General for National Security. Ken oversaw the establishment of the National Security Division, and, under his leadership, the new division played a critical role in numerous national security initiatives. In March 2008, President Bush appointed Ken as the White House's Homeland Security Advisor where he chaired the Homeland Security Council and reported to the President on both homeland security and counterterrorism matters. Since the end of the Bush Administration, he has practiced law with prominent international law firms and has continued to serve our country in a variety of capacities, including as a member of the Bipartisan Commission on Biodefense, as a member of the Webster Commission on the FBI, Counterterrorism Intelligence, and the Fort Hood Shootings, as a member of the CIA General Counsel External Advisory Board, and as chair of the NSA General Counsel Advisory Board.

Ken has served our nation for over 20 years and his lengthy tenure as a government attorney and leader demonstrates his commitment to public service. His remarkable tours of duty at the Justice Department and White House reflect Ken's deep devotion and commitment to the safety and security of the American people.

Ken's record also demonstrates his integrity and independence. As a federal prosecutor, Ken aggressively prosecuted corporate wrongdoers and corrupt public officials, and pursued fraudsters of all types, without fear or favor. He earned the deep respect of the judges and defense bar for his fair and even-handed exercise of prosecutorial discretion and for his focus on civil liberties and the rights of the accused and of victims and witnesses in the criminal justice system. Also, he earned the affection of his colleagues in the U.S. Attorney's Office and of many throughout the Justice Department who – like us – were fortunate to work alongside Ken in the cause of justice.

In sum, Ken epitomizes the ideal qualities of a public servant – honesty, decency, humility, sound judgment and devotion to duty and the nation – and we have no doubt that he will serve with the greatest distinction as the Undersecretary for Intelligence and Analysis, U.S. Department

Letter of support for Ken L. Wainstein
 January 11, 2022
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of Homeland Security. We are therefore honored to offer our unqualified support for his nomination, and we respectfully request that you support his confirmation.

Honorable Michael Chertoff
 Secretary of the U.S. Department of Homeland Security
 2005-2009
 Assistant Attorney General, Criminal Division
 2001-2003

Honorable Eric H. Holder, Jr.
 Attorney General of the United States
 2009-2015

Honorable Mark R. Filip
 Deputy Attorney General of the United States
 2008-2009
 U.S. District Judge, Northern District of Illinois
 2004-2008

Honorable Rod J. Rosenstein
 Deputy Attorney General of the United States
 2017-2019
 United States Attorney, District of Maryland
 2005-2017

Honorable Sally Q. Yates
 Deputy Attorney General of the United States
 2015-2017
 United States Attorney, Northern District of Georgia
 2010-2015

Congressman Robert Laurence Barr, Jr.
 U. S. House of Representatives, 7th District of Georgia
 1995-2003
 United States Attorney, Northern District of Georgia
 1986-1990

Honorable James S. Brady
 United States Attorney, Western District of Michigan
 1977-1981

Honorable Alberto R. Gonzales
 Attorney General of the United States
 2005-2007

Honorable James M. Cole
 Deputy Attorney General of the United States
 2010-2015

Honorable Paul J. McNulty
 Deputy Attorney General of the United States
 2006-2007
 United States Attorney, Eastern District of Virginia
 2001-2005

Honorable Larry D. Thompson
 Deputy Attorney General of the United States
 2001-2003
 United States Attorney, Northern District of Georgia
 1982-1986

Honorable Robert C. Balfe
 United States Attorney, Western District of Arkansas
 2004-2009

Honorable Brian A. Benzckowski
 Assistant Attorney General, Criminal Division
 2018-2020

Honorable Lanny A. Breuer
 Assistant Attorney General, Criminal Division
 2009-2013

Letter of support for Ken L. Wainstein
 January 11, 2022
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Congresswoman Susan Brooks
 U. S. House of Representatives, 5th District of Indiana
 2013-2021
 United States Attorney, Southern District of Indiana
 2001-2007

Honorable John L. Brownlee
 United States Attorney, Western District of Virginia
 2001-2008

Honorable Craig Carpenito
 United States Attorney, District of New Jersey
 2018-2021

Honorable Robert Clark Corrente
 United States Attorney, District of Rhode Island
 2004-09

Honorable Erin Nealy Cox
 United States Attorney, Northern District of Texas
 2017-2021

Honorable Bud Cummins
 United States Attorney, Eastern District of Arkansas
 2001-2006

Honorable John C. Demers
 Assistant Attorney General, National Security Division
 2018-2021

Carol DiBattiste
 Director, Executive Office for United States Attorney
 1994-1997

Honorable Wifredo Ferrer
 United States Attorney, Southern District of Florida
 2010-2017

Honorable Terrance P. Flynn
 United States Attorney, Western District of New York
 2006-2009

Honorable Gregory A. Brower
 United States Attorney, District of Nevada
 2008-2009

Honorable Mark T. Calloway
 United States Attorney, Western District of North Carolina
 1994-2001

Honorable Paul Coggins
 United States Attorney, Northern District of Texas
 1993-2001

Honorable Michael W. Cotter
 United States Attorney, District of Montana
 2009-2017

Honorable William B. Cummings
 United States Attorney, Eastern District of Virginia
 1975-1979

Honorable Deborah J. Daniels
 United States Attorney, Southern District of Indiana
 1988-1993

Honorable Steven M. Dettelbach
 United States Attorney, Northern District of Ohio
 2009-2016

Honorable Edward L. Dowd Jr.
 United States Attorney, Eastern District of Missouri
 1993-1999

Honorable Paul J. Fishman
 United States Attorney, District of New Jersey
 2009-2017

Honorable Fred Foreman
 United States Attorney, Northern District of Illinois
 1990-1993

Letter of support for Ken L. Wainstein
 January 11, 2022
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Honorable Halsey B. Frank
 United States Attorney, District of Maine
 2017-2021

Honorable Barry R. Grissom
 United States Attorney, District of Kansas
 2010-2016

Honorable Timothy Heaphy
 United States Attorney, Western District of Virginia
 2009-2014

Honorable David J. Hickton
 United States Attorney, Western District of Pennsylvania
 2010-2016

Honorable Dwight C. Holton
 United States Attorney, District of Oregon
 2010-2011

Joseph "Jody" Hunt
 Assistant Attorney General, Civil Division
 2018-2020

Honorable William D. Hyslop
 United States Attorney, Eastern District of Washington
 1991-1993, 2019-2021

Honorable Brendan V. Johnson
 United States Attorney, District of South Dakota
 2009-2015

Neal Kumar Katyal
 Acting Solicitor General of the United States
 2010-2011

Honorable William C. Killian
 United States Attorney, Eastern District of Tennessee
 2010-2015

Honorable Wendy Goggin
 United States Attorney, Middle District of Tennessee
 1998-2000

Honorable Melinda Haag
 United States Attorney, Northern District of California
 2010-2015

Honorable Rodger A. Heaton
 United States Attorney, Central District of Illinois
 2005-2009

Honorable Robert J. Higdon, Jr.
 United States Attorney, Eastern District of North Carolina
 2017-2021

Honorable Walter Holton
 United States Attorney, Middle District of North Carolina
 1994-2001

Honorable Robert K. Hur
 United States Attorney, District of Maryland
 2018-2021

Honorable David C. Iglesias
 United States Attorney, District of New Mexico
 2001-2007

Honorable Tim Johnson
 United States Attorney, Southern District of Texas
 2008-2010

Honorable Peter D. Keisler
 Assistant Attorney General, Civil Division
 2003-2007

Honorable David Kris
 Assistant Attorney General, National Security Division
 2009-2011

Letter of support for Ken L. Wainstein
 January 11, 2022
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Honorable William J. Leone
 United States Attorney, District of Colorado
 2004-2006

Honorable Ronald C. Machen, Jr.
 United States Attorney, District of Columbia
 2010-2015

Honorable James A. McDevitt
 United States Attorney, Eastern District of Washington
 2001-2010

Honorable William W. Mercer
 United States Attorney, District of Montana
 2001-2009

Honorable William E. Moschella
 Assistant Attorney General, Office of Legislative Affairs
 2003-2006

Honorable Kevin J. O'Connor
 Associate Attorney General of the United States
 2008-2009
 United States Attorney, District of Connecticut
 2002-2008

Honorable Paul I. Perez
 United States Attorney, Middle District of Florida
 2002-2007

Honorable Richard J. Pocker
 United States Attorney, District of Nevada
 1989-1990

Honorable Ira H. Raphaelson
 United States Attorney, Northern District of Illinois
 1989-1990

Honorable Scott N. Schools
 United States Attorney, Northern District of California
 2007-2008

Honorable Jim Letten
 United States Attorney, Eastern District of Louisiana
 2001-2012

Honorable Alice Howze Martin
 United States Attorney, Northern District of Alabama
 2001-2009

Honorable Barbara L. McQuade
 United States Attorney, Eastern District of Michigan
 2010-2017

Honorable Jan Paul Miller
 United States Attorney, Central District of Illinois
 2002-2005

Honorable Paul B. Murphy
 United States Attorney, Southern District of Georgia
 2004

Honorable Ronald A. Parsons, Jr.
 United States Attorney, District of South Dakota
 2018-2021

Honorable Channing Phillips
 United States Attorney, District of Columbia
 2009-2010, 2015-2017, 2021

Honorable Timothy Q. Purdon
 United States Attorney, District of North Dakota
 2010-2015

Honorable Richard B. Roper
 United States Attorney, Northern District of Texas
 2004-2009

Honorable McGregor W. Scott
 United States Attorney, Eastern District of California
 2003-2009, 2017-2021

Letter of support for Ken L. Wainstein
January 11, 2022
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Honorable Donald K. Stern
United States Attorney, District of Massachusetts
1993-2001

Honorable Michael J. Sullivan
United States Attorney, District of Massachusetts
2001-2009

Honorable G. Zachary Terwilliger
United States Attorney, Eastern District of Virginia
2018-2021

Honorable Stanley A. Twardy, Jr.
United States Attorney, District of Connecticut
1985-1991

Honorable Gregory A. Vega
United States Attorney, Southern District of California
1999-2001

Honorable Benjamin B. Wagner
United States Attorney, Eastern District of California
2009-2016

Honorable John F. Walsh
United States Attorney, District of Colorado
2010-2016

Honorable William D. Wilmoth
United States Attorney, Northern District of West Virginia
1993-1999

Honorable Edward Meacham Yarbrough
United States Attorney, Middle District of Tennessee
2007-2010

Honorable Charles J. Stevens
United States Attorney, Eastern District of California
1993-1997

Honorable Johnny Sutton
United States Attorney, Western District of Texas
2001-2009

Honorable Anne M. Tompkins
United States Attorney, Western District of North Carolina
2010-2015

Honorable John W. Vaudreuil
United States Attorney, Western District of Wisconsin
2010-2017

Honorable Alan Vinegrad
United States Attorney, Eastern District of New York
2001-2002

Honorable Anna Mills Wagoner
United States Attorney, Middle District of North Carolina
2001-2010

Honorable Billy J. Williams
United States Attorney, District of Oregon
2018-2021

Honorable Debra Wong Yang
United States Attorney, Central District of California
2002-2006

Letter in Support of Kenneth L. Wainstein from Law enforcement and Criminal Justice Leaders

January 11, 2022

The Honorable Mark Warner, Chairman
The Honorable Marco Rubio, Vice Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

The Honorable Gary Peters, Chairman
The Honorable Rob Portman, Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

Re: Letter in Support of Kenneth L. Wainstein to serve as Under Secretary for Intelligence and Analysis at the Department of Homeland Security

Dear Chairman Warner, Ranking Member Rubio, Chairman Peters and Ranking Member Portman,

We write in strong support of the nomination of Ken Wainstein to serve as Under Secretary for Intelligence and Analysis at the Department of Homeland Security.

Ken has devoted the majority of his career to public service. He started out as a line prosecutor in the United States Attorneys' Offices for the Southern District of New York and the District of Columbia, and then served in a number of leadership positions within the Justice Department, to include General Counsel and Chief of Staff of the Federal Bureau of Investigation, United States Attorney for the District of Columbia, and Assistant Attorney General for National Security. He was then chosen by President George W. Bush to serve as the Homeland Security Advisor at the White House.

Throughout his career, Ken has proven himself not only as an effective lawyer, but also as a very strong manager and leader. As U.S. Attorney in Washington DC, Ken worked hard to energize and build morale among his staff, and also to develop a sense of teamwork between his prosecutors and their partner law enforcement agencies. As Chief of the Metropolitan Police Department (MPD) during that time, one of us, Charles Ramsey, can personally attest to Ken's strong efforts to support and work closely with that department and the other law enforcement agencies in the city. Under his leadership, the U.S. Attorney's Office acted as a true partner with law enforcement and with the city leadership, allowing the federal and D.C. authorities to make significant strides together for public safety in the Nation's Capital.

Ken also has a keen understanding of the intelligence process and the need to ensure open and regular sharing of intelligence between the federal government and its state, local, tribal and territorial partners. He has demonstrated that understanding at every step of his career. Whether he was sharing intelligence that he and his investigative teams generated through community prosecution, working as U.S. Attorney to open channels of intelligence communication with MPD and its partners, or doing outreach to state and local authorities as Homeland Security Advisor, Ken has always recognized that effective law enforcement and homeland security operations require maximum coordination and information-sharing between the federal government and our Nation's law enforcement agencies. As such, we cannot think of anyone better suited to manage the Office of Intelligence and Analysis, the entity that is statutorily designated to lead the federal government's information-sharing efforts with its partners around the country.

Based on Ken's distinguished record of public service and his demonstrated commitment to the cause of justice, to the protection of civil liberties, and to our national security, we have absolute confidence that Ken will serve with great distinction as the Under Secretary for Intelligence and Analysis. We therefore give his nomination our unqualified endorsement and respectfully request that you support his prompt confirmation for that important position.

Letter in Support of Kenneth L. Wainstein from Law enforcement and Criminal Justice Leaders

We urge the Senate to quickly confirm Mr. Wainstein.

Thank you for your consideration.

Respectfully submitted,

Charles Ramsey, (former Police Commissioner, Philadelphia 2008-2016; Police Chief, Metropolitan Police, Washington DC, past president of PERF and Major Cities Chiefs Association)

William Bratton, (former NYPD and Boston Police Commissioner, LAPD Police Chief, past president of PERF and Major Cities Chiefs Association)

Gil Kerlikowske, (former Commissioner, U.S. Customs and Border Protection 2014-2017, Seattle Police Chief 2000-09, past president of PERF)

Terrance Gainer, (38th United States Senate Sergeant at Arms, 2007-2014, Chief of Police, United States Capitol Police, 2002-2007; Executive Assistant Chief of Police, Metropolitan Police, District of Columbia, 1998-2002; Director, Illinois State Police, 1991-1998)

J. Scott Thomson, (former Police Chief Camden County, NJ 2008-2019, past president of PERF)

Karen Tandy, (former Administrator, Drug Enforcement Administration, 2003-2007; US Associate Deputy Attorney General, US Department of Justice 1999-2003)

Kathy Jennings (Attorney General, Delaware, 2019-present)

Jerry Clayton, Washtenaw County Sheriff, Ann Arbor, MI 2009-present

Cathy Lanier, Chief of Police, Washington, D.C. 2007-2016

Jonathan Thompson, Executive Director/CEO National Sheriffs' Association: 2015-present

Arif Alikhan, Assistant Secretary, DHS (2009-2010)

Richard Myers (former Executive Director, Major Cities Chiefs Association, 2017-2019; Chief of Police: Newport News, VA 2014-2017; (Interim) Sanford, FL 2012-2013; Colorado Springs, CO 2007-2011; Appleton, WI 1995-2007; Lisle, IL 1991-1995; Plymouth, MI 1985-1991; Atlas Twp, MI 1984-1985)

Carmen Best, (former Chief of Police Seattle)

Ivonne Roman, (former Police Chief Newark, NJ 2020; Co-founder 30x30initiative.org, 2021 to present)

Jim Bueermann, (former Chief of Police, Redlands, CA 1998-2011, President, National Police Foundation, 2012-2019)

William Gross, (former Police Commissioner, Boston, MA, 2018-2021)

Frank Dixon, (Chief of Police, Denton, Tx 2018-Present)

Renee' Hall, (former Chief of Police, Dallas, TX, 2017-2020)

Cameron McLay, (former Chief of Police, Pittsburgh, PA 2014-2016; Snr. Director, Center for Policing Equity, 2019 – present)

Nola Joyce, (former Senior Executive Director and Chief Administrative Officer, Metropolitan Police Department, Washington, D.C. 1997-2007; Deputy Commissioner, Philadelphia Police Department, Philadelphia, PA 2008-2016)

Letter in Support of Kenneth L. Wainstein from Law enforcement and Criminal Justice Leaders

Darrel Stephens, (former MCCA Executive Director 2010-2017, Chief Charlotte Mecklenburg Police Department 199-2008, Instructor Johns Hopkins University 2008-2013)

Roy Minter, (Police Chief, Savannah, GA 2018-present)

Barry Grissom, (US Attorney District of Kansas 2010-2016)

Benjamin Therriault, (Police Officer, Richmond, C, 2009-Present; President Richmond Police Officer's Association 2016-Present; PORAC Bay Area Director 2018-Present)

Rich Stanek, (former Sheriff of Hennepin County, MN. 2007-2019)

Peter Koutoujian, Sheriff, Middlesex, 2011-Present

Daniel J. Oates, (former Police Chief Miami Beach, 2014-2019; Aurora, Co., 2005-2014; Ann Arbor, Mi., 2001-2005)

Neil Trugman, (Chief of Police, Amtrak Police Department-2016-2020, Law Enforcement Intelligence Coordinator MPDC 2000-2004)

Kathleen O'Toole, Chief of Police, Seattle WA 2014-2018, Commissioner, Boston Police 2004-2006, MA Secretary of Public Safety, 1994-1998

Kim C. Dine (Chief of Police, Frederick, MD 2002-2012; Chief of Police, United States Capitol Police, 2012-2016)

Hal Hardin (former US Attorney Middle District of Tennessee)

Kami Chavis (former AUSA- DC, Professor of Law and Director of the WFU Criminal Justice Program Wake Forest University School of Law)

Jan 12, 2022

The Honorable Mark Warner
Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

The Honorable Marco Rubio
Vice Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

Re: Nomination of Kenneth L. Wainstein to be Undersecretary for Intelligence and Analysis,
Department of Homeland Security (PN1413)

Dear Chairman Warner and Vice Chairman Rubio:

We write today to express our very strong support for the nomination of Ken Wainstein to serve as the Undersecretary for Intelligence and Analysis at the Department of Homeland Security. Taken together, we represent a broad, bipartisan group of former government officials and national security practitioners and experts who have worked with Ken in his various roles in the government and the private sector over the past three decades.

Ken is a unique and distinguished leader who would make a stellar DHS Undersecretary for Intelligence and Analysis. He has served as a senior career government official and a political appointee across multiple Administrations, rising to the top ranks each time based on a potent combination of intellect, passion, leadership skills, and drive to get the job done, and done right. Ken will bring many years of direct national security, counterterrorism, intelligence, and homeland security experience to bear on this position, should the Senate confirm him. Having served as a career federal prosecutor for over a decade and as general counsel and chief of staff to the Director of the Federal Bureau of Investigation at the Department of Justice, Ken knows firsthand the power that the law can have when used in a just and ethical manner to protect and defend our nation's security and that of its citizens. Ken's deep commitment to the rule of law was clear when he later served as the United States Attorney for the District of Columbia and then as the first-ever head of the Justice Department's then-brand-new National Security Division.

As the senior leader in the Justice Department responsible for heading up the first new division within DOJ in nearly 50 years, Ken led a team of seasoned prosecutors and intelligence and national security policy lawyers tackling some of the toughest legal issues in the government, helping to protect the nation from terrorist threats and foreign adversaries alike while also preserving and protecting our privacy and civil liberties. Ken exercised strong leadership in this space, bringing together lawyers, intelligence analysts and operators, and criminal investigators from DOJ, including the FBI, the former Office of Intelligence Policy and Review, and the Criminal Division, as well as from elements across the intelligence community, including CIA and

NSA, consistently earning him the deep respect and admiration of both line career staff as well as senior career and political leaders in every agency he worked alongside. It is hard to find a leader in the government today who generated as much loyalty, drive, and commitment amongst as diverse a group of national security professionals as Ken did during his time in the Justice Department. Indeed, it was specifically because of his commitment to the rule of law, his expertise in national security, intelligence, and homeland security matters, and his leadership abilities, as well as his potent policy background, that President Bush selected Ken to serve as the fourth Assistant to the President for Homeland Security and Counterterrorism.

Since leaving the government in 2009, Ken has continued to enjoy the trust of senior leaders and public figures, this time in the private sector as a senior partner in some of the most storied law firms in the nation. Just as he did in his role as a senior government leader, Ken has distinguished himself as a trusted advocate and counselor who can be relied upon for his candor and forthrightness with both his clients and the lawyers and parties on the other side of any matter. Ken is exactly the type of leader we need at the Department of Homeland Security today: one who will ensure that we do what it takes to keep our nation and its people safe while simultaneously adhering strongly to the rule of law and protecting and defending the rights and liberties that we cherish as Americans. We have no doubt that, if confirmed, Ken will not only defend our nation, our citizens, and our allies abroad, as well as our Constitution and laws, with everything that he has, but will also be the kind of leader that DHS needs at a time of great consequence to our nation, where we face major challenges both at home and abroad.

In sum, we believe that Ken's deep experience in national security, intelligence, and homeland security makes him an ideal candidate to serve as Undersecretary for Intelligence and Analysis at the Department of Homeland Security, and we urge the Committee to consider and act on his nomination expeditiously, given the need for the kind of leadership he brings in today's challenging environment.

Thank you for the opportunity to share our views with the Committee. Please feel free to contact any of us directly should you want additional information or thoughts on this nomination.

Sincerely,

GEN (Ret) Keith Alexander
Former Director, National Security Agency & Founding Commander, U.S. Cyber Command

Javed Ali
Former Senior Director for Counterterrorism, National Security Council, The White House

Michael Allen
Former Special Assistant to the President and Senior Director for Counter-Proliferation Strategy,
National Security Council, The White House

Dmitri Alperovitch
Former Special Advisor, Department of Defense

Charles W. Alsup
Former Associate Deputy Director of National Intelligence, Office of the Director of National Intelligence

Stewart Baker
Former Assistant Secretary for Policy, Department of Homeland Security

Jeremy Bash
Former Chief of Staff, Department of Defense

John B. Bellinger III
Former Legal Adviser, Department of State

Peter Bergen
Vice President, New America

George Bobb
Former Counsel for National Security Law & Policy, National Security Division, Department of Justice

Megan Brown
Former Counsel to the Attorney General, Department of Justice

Stevan E. Bunnell
Former General Counsel, Department of Homeland Security

William A. Burck
Former Deputy Assistant to the President and Deputy Counsel, Office of the Counsel to the President, The White House

Robert J. Butler
Former Deputy Assistant Secretary of Defense for Cyber and Space Policy, Department of Defense

Senator Saxby Chambliss
Former Vice Chairman, Senate Select Committee on Intelligence

Anjali Chaturvedi
Former Chief, Organized Crime Strike Force and Assistant United States Attorney, Department of Justice

Michael Chertoff
Former Secretary of Homeland Security

Jason Chipman
Former Senior Counsel to the Deputy Attorney General, Department of Justice

James Clapper
Former Director of National Intelligence

Jared Cohen
Former Policy Planning Staff Member, Department of State

Carrie Cordero
Former Counsel to the Assistant Attorney General for National Security, Department of Justice

William P. Crowell
Former Deputy Director, National Security Agency

Brian de Vallance
Former Assistant Secretary of Legislative Affairs, Department of Homeland Security

Robert L. Deitz
Former General Counsel, National Security Agency

April Falcon Doss
Former Associate General Counsel for Intelligence Law, National Security Agency

Paula Doyle
Former Associate Deputy Director for Operations Technology, Central Intelligence Agency

Timothy H. Edgar
Former Director of Privacy and Civil Liberties, National Security Council, The White House

Brian J. Egan
Deputy Counsel to the President and Former Legal Advisor to the National Security Council,
The White House

Courtney Simmons Elwood
Former General Counsel, Central Intelligence Agency

William Evanina
Former Director, National Counterintelligence Security Center

Karen S. Evans
Former Chief Information Officer, Department of Homeland Security

Michael Geffroy
Former General Counsel, Select Committee on Intelligence, United States Senate

Sarah Roland Geffroy
Former Chief Counsel, Permanent Select Committee on Intelligence, United States House of Representatives

Brett Gerry
Former Deputy Assistant Attorney General for Law and Policy, National Security Division, Department of Justice

Glenn S. Gerstell
Former General Counsel, National Security Agency

Andrew Grotto
Former Senior Director for Cyber Policy, National Security Council, The White House

General Michael Hayden
Former Director, Central Intelligence Agency

Joanne Isham
Former Deputy Director, National Geospatial Intelligence Agency

Jamil N. Jaffer
Former Associate Counsel to the President, The White House

Frank R. Jimenez
Former General Counsel of the Navy, United States Navy

Clete D. Johnson
Former Senior Adviser for Cybersecurity and Technology, Office of the Secretary, Department of Commerce

Geof Kahn, Former Senior Advisor to the Chief Operating Officer, Central Intelligence Agency

Juliette Kayyem
Former Assistant Secretary for Intergovernmental Affairs, Department of Homeland Security

Andy Keiser
Former Senior Advisor, Permanent Select Committee on Intelligence, United States House of Representatives

Paul B. Kurtz
Former Senior Director for Cyber Security and Special Assistant to the President for Critical Infrastructure Protection, The White House

Richard H. Ledgett, Jr.
Former Deputy Director, National Security Agency

VADM Michael A LeFever, USN (Retired)
Former Director, Strategic Operational Planning, National Counterterrorism Center

Michael Leiter
Former Director, National Counterterrorism Center

Stuart Levey
Former Under Secretary of the Treasury for Terrorism and Financial Intelligence, Department of the Treasury

Dr. James A. Lewis
Former Head of U.S. Delegation, Wassenaar Arrangement Experts Group, Department of State

Rachel Carlson Lieber
Former Deputy General Counsel, Central Intelligence Agency

Andrew Liepman
Former Deputy Director, National Counterterrorism Center

Jessie K. Liu
Former United States Attorney for the District of Columbia

David Luckey
Former Director of Homeland Security and Counterterrorism Advisor to the Chairman, Committee on Homeland Security and Governmental Affairs, United States Senate

Sigal Mandelker
Former Under Secretary of the Treasury for Terrorism and Financial Intelligence, Department of the Treasury

Mike McConnell
Former Director of National Intelligence

John M. Mitnick
Former General Counsel, Department of Homeland Security

Michael Morell
Former Deputy Director and Acting Director, Central Intelligence Agency

Michael B. Mukasey
Former Attorney General of the United States

Christopher Painter
Former Coordinator for Cyber Issues, Department of State

Leon Panetta
Former Secretary of Defense

John S. Pistole
Former Deputy Director, Federal Bureau of Investigation

Vito T. Potenza
Former General Counsel, National Security Agency

Stephen W. Preston
Former General Counsel, Department of Defense

Nicholas Rasmussen
Former Director, National Counterterrorism Center

Alan Charles Raul
Former Vice Chairman, Privacy and Civil Liberties and Oversight Board

Dr. Samantha F. Ravich
Former Vice Chair, President's Intelligence Advisory Board

Tom Ridge
Former Secretary of Homeland Security

W. Price Roe
Former Counselor to the Secretary, Department of Homeland Security

Paul Rosenzweig
Former Deputy Assistant Secretary for Policy, Department of Homeland Security

Norman T. Roule
Former Component Chief, Directorate of Operations, Central Intelligence Agency

J. Patrick Rowan
Former Assistant Attorney General for National Security, National Security Division,
Department of Justice

Marie O'Neill Sciarrone
Former Special Assistant to the President for Homeland Security and Senior Director,
Cybersecurity and Information Sharing Policy, Homeland Security Council, The White House

Anne-Marie Slaughter
Former Director of Policy Planning, Department of State

Charles M. Steele
Former Chief of Staff, National Security Division, Department of Justice

Megan Stifel
Former Director for International Cyber Policy, National Security Council, The White House

Andrew Tannenbaum
Former Deputy General Counsel, National Security Agency

Francis X. Taylor
BGen, USAF (Ret), Former Under Secretary, Office of Intelligence and Analysis, Department of Homeland Security

Rob Walker
Executive Director, Homeland Security Experts Group

Thomas Warrick
Former Deputy Assistant Secretary for Counterterrorism Policy, Department of Homeland Security

Matthew C. Waxman
Former Deputy Assistant Secretary of Defense, Department of Defense

Julie Myers Wood
Former Assistant Secretary for Immigration and Customs Enforcement, Department of Homeland Security

Lawrence K. Zelvin
Former Director, National Cybersecurity and Communications Integration Center, Department of Homeland Security

Chairman WARNER. Will the witness please stand and raise your right hand?

[Witness stands and raises right hand.]

Do you solemnly swear to give this Committee the truth, the full truth, and nothing but the truth, so help you God?

Mr. WAINSTEIN. I do.

Chairman WARNER. Please be seated.

Before moving to your opening statement, I will ask you to answer five standard questions the Committee poses to each nominee who appears before us. They just require a simple yes or no for the record.

First, do you agree to appear before the Committee here or in other venues when invited?

Mr. WAINSTEIN. Yes, I do.

Chairman WARNER. If confirmed, do you agree to send officials from your office to appear before the Committee and designated staff when invited?

Mr. WAINSTEIN. Yes.

Chairman WARNER. Do you agree to provide documents or any other materials requested by the Committee in order for it to carry out its oversight and legislative responsibilities?

Mr. WAINSTEIN. Yes.

Chairman WARNER. Will you ensure that your office and your staff provide such material to the Committee when requested?

Mr. WAINSTEIN. Yes.

Chairman WARNER. Do you agree to fully inform and fully brief to the fullest extent possible all Members of this Committee, rather than simply the Chairman and Vice Chairman?

Mr. WAINSTEIN. Yes.

Chairman WARNER. Thank you very much.

And now we'll proceed with your opening statement after which I'll recognize Members for five minutes by seniority.

STATEMENT OF KENNETH L. WAINSTEIN, NOMINEE TO BE UNDER SECRETARY FOR INTELLIGENCE AND ANALYSIS, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. WAINSTEIN. Thank you, Chairman Warner, Vice Chairman Rubio, Members of the Committee.

I'm profoundly honored to appear before you today as the nominee for Under Secretary for Intelligence and Analysis at the Department of Homeland Security.

I'm joined here today by my wife, Elizabeth, and my daughters Mackie, Cecily, and Natalie. And I'd also like to recognize, as you mentioned, my daughter Ellie, who purportedly is watching this from Berkeley back at school today. It means a lot to me that they are with me today and it's meant a lot to me that they've been with me throughout my career.

I'm also grateful to President Biden for giving me this opportunity to serve and the opportunity to work with his strong national security team. I'm also grateful to him for looking beyond political optics and selecting someone who previously served in a Republican Administration. In a small but important way, that is a reaffirmation of the non-partisan approach to national security that

has traditionally been and must always remain a bedrock principle of our government.

That is the same nonpartisan approach I always took during my 21 years of government service. I first served as a Federal prosecutor for about a dozen years, handling a range of homicide, gang conspiracy, and white collar criminal cases, and doing so without any consideration of politics and with a clear focus on protecting civil liberties and due process rights.

I then pivoted after the 9/11 attacks to focus primarily on national security matters: helping the FBI reorient itself toward its intelligence mission after 9/11, establishing the new National Security Division with my colleagues at the Justice Department, running the Homeland Security Council as President Bush's Homeland Security Advisor, and once again, taking the same non-partisan approach I'd learned as a prosecutor and making every decision with full regard for its effect on civil liberties.

During this government service, I worked closely with DHS and admired how the Department established itself under the exceptional leadership of Governor Tom Ridge and how it responded then to a constant stream of natural and homeland security threats.

I'm clear-eyed, however, that those threats have multiplied in the years since, and that the DHS of today faces an increasingly complex threat environment from nation-state adversaries like China and Russia, and others who target our elections and steal our sense of technology, and from cyber criminals and transnational criminal organizations that victimize our communities.

I&A is absolutely critical to the Department's ability to meet each and every one of those threats. To use Secretary Mayorkas's words, DHS is fundamentally a department of partnerships and it is I&A's mission to make those partnerships effective by ensuring that relevant intelligence is fully circulated throughout the whole homeland security enterprise.

I&A performs a number of functions to accomplish that mission. It manages the information and intelligence sharing with our state, local, tribal, territorial, and private sector partners. It serves the intelligence needs of the DHS components and leadership. It leverages the information holdings of the DHS components to identify and address threats to our national security and it coordinates information-sharing within the department.

If I'm confirmed, I will work hard to enhance I&A's ability to accomplish each of those tasks.

First, I intend to focus on the workforce of I&A, which, as I have seen, is a very strong and impressive group of dedicated intelligence professionals. As a manager, I've always believed that it's my first duty to support my personnel. And as a leader of an intelligence agency, I'll be particularly vigorous in defending their ability to deliver objective, unvarnished analysis that is completely free from any political influence.

I'll also carefully review I&A's operational role in the homeland intelligence enterprise in order to identify and eliminate any unnecessary duplication or overlap, and to focus I&A's role in those areas where it adds particular value.

I'll maintain a constant focus on the implications of I&A's activities on civil liberties and privacy and the need for strong safeguards, oversight, and transparency in our intelligence operations. As we all know, we can only be successful at safeguarding our people, our homeland, and our values if we maintain the trust of our fellow citizens.

And importantly, I will work in close collaboration with Congress and with this Committee in particular. I've long had a strong relationship with the Members and staff of this Committee and I've always had deep respect for it. And if confirmed, you can count on my being a very willing and very collaborative partner in our joint effort to make I&A as effective as possible.

Thank you, again for the opportunity to appear before you today and for the honor of considering me for this position. And I'm happy to answer any questions that you might have.

[The prepared statement of Mr. Wainstein follows:]

**Statement for the Record
Select Committee on Intelligence
United States Senate**

**Kenneth L. Wainstein
Nominee to be Under Secretary for Intelligence and Analysis
Department of Homeland Security**

January 12, 2022

Chairman Warner, Vice-Chairman Rubio, and members of the Committee, I am profoundly honored to appear before you today as the nominee for Under Secretary for Intelligence and Analysis (I&A) at the Department of Homeland Security.

I am joined here today by my wife Elizabeth and my daughters Mackie, Cecily and Natalie. I'd also like to recognize my daughter Ellie who is watching this from back at school. It means a lot to me that they're with me today, and that they've been with me over the years throughout my career.

I'm grateful to the President for giving me this opportunity to work with his strong national security team. I'm also grateful to him for looking beyond political optics and selecting someone who previously served in a Republican administration. In a small but important way, that is a reaffirmation of the non-partisan approach to national security that has traditionally been – and must always remain – a bedrock principle of our government.

That is the approach I have always taken to government service. I was a federal employee for over two decades, serving the first dozen years as a federal prosecutor -- investigating and prosecuting homicides, gang conspiracy cases and white-collar criminals, working closely with crime victims, and always exercising my prosecutorial discretion with an eye both to protecting civil liberties and due process rights and to assiduously avoiding any consideration of politics or political influence.

The attacks of September 11th were a turning point for me, as I pivoted to focusing primarily on protecting our country against terrorism, espionage and other national security threats. That was my overriding focus during my service at the FBI, in establishing the new National Security Division at DOJ, and in advising the President as his Homeland Security Advisor. In those roles, I took the same non-partisan approach I had learned as a prosecutor, and approached every decision point with full regard for civil liberties considerations.

During my government service, I worked closely with DHS. I admired how the department established itself under the exceptional leadership of Governor Tom Ridge and how it responded to a constant stream of natural and homeland security threats. I am clear-eyed, however that DHS now faces an increasingly complex threat environment --

including from nation-state adversaries like China, Russia, and others who target our elections and steal our sensitive intellectual property and from cybercriminals and transnational organizations that victimize our communities.

I&A is critical to the department's ability to meet those threats. To use Secretary Mayorkas's words, DHS was established, fundamentally, as "a department of partnerships," and it is I&A's mission to make those partnerships effective. As you well know, intelligence is the lifeblood of homeland security operations, and we cannot be effective unless that intelligence is fully circulated throughout the homeland security enterprise.

I&A performs a range of functions to accomplish that mission. It has primary statutory responsibility for sharing information and intelligence with our state, local, tribal, territorial and private sector partners. It serves the intelligence needs of the DHS components and leadership, ensuring that internal policymaking and operational customers receive relevant intelligence. It leverages the significant information holdings of the DHS component agencies to identify and confront threats to our national security. And, it is tasked with coordinating information-sharing within the Department.

If I am fortunate enough to be confirmed, I will work hard to enhance I&A's ability to accomplish those tasks.

First, I will focus on the workforce of I&A. As a manager, I have always believed that my first duty is to support my personnel, and as a leader of an intelligence agency, I will vigorously defend their ability to deliver objective, unvarnished analysis that is free from political influence.

I will review I&A's operational role in the homeland intelligence enterprise with an eye to identifying and eliminating unnecessary duplication or operational overlap and focusing I&A's role on those areas where it adds particular value.

I will maintain a constant focus on the implications of I&A's activities on the privacy and civil liberties of United States persons and the need for strong safeguards, oversight, and transparency in our intelligence operations. We can only be successful at safeguarding our people, our homeland, and our values if we maintain the trust of our fellow citizens.

And importantly, I will work in close collaboration with Congress and with this Committee, in particular. I have long had a strong relationship with the staff and Members of this Committee, and if confirmed, you can count on my being a very willing and collaborative partner in our joint effort to make I&A as effective as it can be.

Thank you again for the opportunity to appear before you today and for the honor of considering me for this position. I am happy to answer any questions you might have.

Chairman WARNER. Thank you, Mr. Wainstein.

For planning purposes, if any Members of the Committee wish to submit questions for the record after today's hearing, please do so by 5 p.m. this Friday, January 15th.

I'd like to start, and this is one of the questions we had when we had a chance to visit over Zoom. You've had positions in prior Administrations that, at least in terms of the outside hierarchical approach, appeared to be higher in the food chain. You've had an extraordinary, successful private-sector career.

Share with the Committee why you're willing, at this moment in time, to come back to a part of DHS that I think really needs strong leadership, but it would not be viewed as a conventional choice.

Mr. WAINSTEIN. I appreciate that question, Mr. Chairman, and once again, thank you for the opportunity to talk to you the other day.

Well look, it was the honor of my life and career to work in government for the 21 years that I did. And yet the titles and the positions and the responsibility at higher levels is great and it's exciting, but it's really the substance of the job and the people you do the job with that make it so important. I've often been asked, what's my favorite job I've ever had? And my answer, honestly, is being an AUSA—working with trial teams, prosecuting cases. That's the low end of the totem pole, but it was the substance of it, the meaningfulness of it, and the camaraderie of it were the best. And that's the way I look at this. It's a wonderful team from Secretary Mayorkas on down and then the larger constellation of national security leadership in this Administration. As you pointed out, we're at a critical time in our history. I&A has an important role to play in a lot of really important missions. So, I couldn't be more proud and more excited about this opportunity.

Chairman WARNER. Well, I accept that answer, and I appreciate your willingness to serve. I promise I won't reveal to either President Bush or Bob Mueller that you said the AUSA job was better than working for both those individuals directly.

Talk to me a little bit, and I think many Members may want to get into this. And it's one of the reasons why I think you're such the right choice right now. This is a piece of DHS that a lot of us were concerned about in terms of what happened in Portland. A lot of us were concerned it didn't do a very good job in terms of alerting prior to January 6th. There are enormous challenges in terms of how you set up your role vis-à-vis the FBI and what kind of collections.

Can you talk about how you can work with the FBI, but also de-conflict with the FBI?

Mr. WAINSTEIN. Thank you, Mr. Chairman.

Look, there are issues with I&A as there are with any organization. I just want to say, I spent a lot of time with the folks in I&A over the last few weeks and I've been tremendously impressed, as I said in my remarks, with their quality and their dedication. They're good people and that's the key. I mean, when you have good people on the team, the team can succeed.

It's had some headwinds. For a number of reasons, they had largely acting leadership, which is a problem. That's not anybody's

fault. That's just happened. And then a variety of things have happened that have made things difficult. But the makings of a strong team and a strong operation are there and they're doing great things right now.

In terms of, specifically, the work with the FBI, I think that's an important issue. When you look at the intelligence enterprise in our government, the lines, very intentionally, are not clearly delineated. There's overlap. There should always be some overlap between the different agencies.

But you have to keep a focus on that because you don't want overlap to mean duplication. Or for that, even worse, confusion. Because if two intelligence agencies are working in the same space and come up with different analyses, that just confuses the customers.

So, the FBI and I&A need to work very closely together. I understand they have a strong relationship. And I expect that, if I'm fortunate to be confirmed, one of my first visits will be to go down to FBI headquarters to talk about the state of the relationship—where we can coordinate better and where we can make the lines clearer.

Chairman WARNER. Yes. I'll give you the benefit of the doubt here, I do wonder at what point do you throw a case, an investigation, over the transom to the FBI to pursue potentially for criminal charges versus how far you might pursue a matter?

I also think you're going to have challenges with de-confliction with CISA, as well. I think one of the things that Chris Krebs did a great job for President Trump—and I think Jen Easterly is doing a good job right now, is really building up those capabilities at CISA. But there's going to be some of those—you're going to have some rub with CISA as well. Do you want to speak to that for a moment?

Mr. WAINSTEIN. Look, you just sort of look at the org chart and look at the responsibilities and you see there's going to be some overlap. And in fact, my sense is that the two entities have done a good job trying to coordinate and making sure that I&A is providing the intelligence advantages, both within DHS and CISA, as well as the state and locals, and that CISA is helping to operationalize that.

I've been in touch with Jen Easterly. She and I talked at length just the other day and we're going to be focusing on that overlap. And, frankly, on the need for that coordination to be even stronger, because it's got to be the intelligence and operational sides working together.

Chairman WARNER. Senator Rubio.

Vice Chairman RUBIO. Thank you.

As we discussed on the phone, and this would come up today, so I want to give you an opportunity to address it. There's some reason to address, I believe, the very few but nonetheless billable hours on behalf of the China National Offshore Oil Corporation. And the reason why it's of concern is because it fits the fact pattern for how the Chinese Communist Party aggressively plays abroad, and in particular—

Here are the basic facts as I understand them.

So, I think the first thing is, I want to make sure I understand the facts and the Members of the Committee do. In April 2018, a partner at the firm, I believe in the China office, asked for help because he was working for their client, the CNOOC, China National Offshore Oil Corporation. And it was related to a March 2018 release by the U.S. Trade Representative of something with the findings of the investigation into China's acts, policies, practices related to technology transfer.

The report included the government's evidence for how the Chinese government provided competitive intelligence through cyber-intrusions to Chinese state-owned enterprises and further and sub its "Made in China 2025" goals and as part of its military civil fusion. And the report explicitly stated that in 2012, this company twice requested and received intelligence from Chinese intelligence services that helped them in negotiations with five U.S. companies. In fact, the report specifically found that these examples illustrate how China uses the intelligence resources at its disposal to further the commercial interests of Chinese state-owned enterprises to the detriment of their foreign partners and competitors.

So, the core nugget in the report is there is no distinction really between a Chinese company and the government. American corporations competing with a foreign corporation don't get to go to the CIA, or NSA, or whatever and get intelligence information to negotiate and compete. And these guys do.

But the fact pattern about you being asked by a partner at the firm to look into it, I believe, is correct. So, if you could just tell us what was the nature of the work and why were you called in to do it? What did you do?

Mr. WAINSTEIN. Thank you, Senator Rubio. And thanks for raising this and flagging it in our call the other day. That was very good of you and I appreciate you asking about it. And I think it's an appropriate thing, an important thing, to ask about.

Just in terms of the facts, I think you have the facts largely right. It was actually a partner here in the States who does trade stuff. So, that partner was looking to see what trade sanctions kind of consequences there could be because of these allegations. And he thought, to be complete, he wanted to find out if there was any criminal exposure. So, he asked me to have an associate write a memo that just said, these are the criminal laws that could be implicated.

That associate did that. I passed the memo back and, as you said, it was 2.8 hours of work. I had no contact with the client, did no advocacy, talked to nobody, didn't call anybody in the government. It was literally sort of like almost a law school exercise by the associate. But it was on behalf of the Chinese oil company.

And look, you raise, I think, very legitimate concerns about—and not just here, but you are leader in this area. I know that you and Senator Warner have done a roadshow with members of academia and industry to raise the alarm about what China's doing. And I agree with you on the need to do that and the fact that that's happening.

We're seeing now an assault across the board in every space—political, economic, military—by China to try to become dominant over the United States and change the world order. So, I agree

with that. And in fact, I think I mentioned this the other day, harking back to my time in the National Security Division at DOJ, 2006 to 2008, that's when there was just a dawning realization that in terms of technology theft, that the Chinese were rapacious.

And so my colleagues and I were really banging the drum, sounding the alarm about that back then to try to get academia and industry to pay attention.

So, this is consistent with what I've seen over the last 15 years. And I can assure you that if I get into the position at I&A, I'll keep sounding that alarm.

Vice Chairman RUBIO. Yes. And so my time is about to expire. But I'm curious, what did you know about this company before this work came to you? The way you described it is: a partner came to you and said, "Can I get answers to this?" You handed it off to an associate who did a law-school-type exercise; came back with a memo. You reviewed it and you submitted it to the partner that requested it.

But what did you know about this company at the time? And I'm just curious: obviously, would it make you sort of queasy in any way or concern that the firm was advocating or trying to help a company that undertakes these sorts of actions that implicate national security concerns?

Mr. WAINSTEIN. Well, a couple things. I think when I thought about it, I thought this was—he was looking at a range of sanctions. He didn't have the expertise to look at white collar. I was just the one through whom the assignment would go to somebody in the white collar space to look at that and say, these are the possible laws that can be implicated.

Just to clear one thing; you said "advocate." I don't think there's any advocating that went on. This was a sort of an explanatory exercise. And actually when you think about it—

Vice Chairman RUBIO. But I meant the firm. The firm representative was an advocate on behalf of this entity, not necessarily you directly or even the associate.

Mr. WAINSTEIN. I believe they were doing trade work with them, but I honestly don't know for sure.

But to answer your question, I should have thought more about it than I did that day.

Chairman WARNER. Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman.

And Mr. Chairman, first, let me express my thanks to you for your responsiveness to my concerns about what's happened in Portland.

And to Mr. Wainstein, I appreciated visiting with you, and as you know, I believe in making sure witnesses know what we're going to talk about. And so you're aware of these questions.

Mr. WAINSTEIN. I appreciate that very much.

Senator WYDEN. When the Trump administration sent Department of Homeland Security troops into my hometown in the summer of 2020, the Department's Office of Intelligence and Analysis was there too. According to a report by the Department's Office of General Counsel, the Intelligence Office sent untrained, inexperienced personnel to Portland without a plan or clear management. So, I spent months battling to get the General Counsel's report re-

leased to the public so that Oregonians would know about the abuses that took place. The report was finally released last October, but because of redactions, I am still pushing to get the full picture out for Oregonians.

One issue in particular I have focused on, is the General Counsel's finding that dossiers were developed on people, presumably including my constituents, who apparently were no threat to homeland security. According to the report, some junior personnel were so upset about this, they refused to even work on them. So, that's why Oregonians want to know what went into these dossiers that were distributed around the Department of Homeland Security. But so far, that information is just being withheld.

So, do you believe the Department of Homeland Security intelligence personnel ought to be collecting and distributing dossiers on Americans?

Mr. WAINSTEIN. Thank you again for that meeting the other day, and thank you for your practice of giving a heads up for all the questions that you're going to ask a nominee like myself.

I was troubled by what I read in that report. The part that's been made public. I've been heartened to hear about a number of the changes that have been put in place to address some of the lack of training, lack of guidance, and, as you pointed out, lack of ability on the part of some who were concerned about what was going on but who felt that they couldn't raise the alarm. I can assure you that that will not be the situation if I'm heading I&A. People will feel fully comfortable to step forward and raise their concern. In terms of—

Senator WYDEN. But what about these dossiers, though? Should there be dossiers? What information ought to be in them? Who should get to see them? Because that's what my constituents want to know.

Mr. WAINSTEIN. Yes. And that goes with the guidelines and it's very clear.

Now, let me step back for a second. As you and I discussed, open-source collection, which is what I&A does—it can be fraught, especially if it's done in a context of protests or demonstrations. And so, there are clear guidelines about what DHS/I&A can and cannot do. So, for example, they can only collect information and distribute it if it's relevant to a departmental mission, like protecting against terrorism. They cannot collect just if somebody is exercising their First Amendment rights; you can't do that. You have to use the least-intrusive means of collecting information.

And then, once that information is collected, in terms of disseminating it, this is U.S. person information that needs to be carefully handled pursuant to Executive Order and pursuant to law. And so it shouldn't be just distributed without regard to privacy. And what I read in that report is that there was insufficient training and guidance as to how information about those U.S. persons could and couldn't be distributed.

Senator WYDEN. I'm getting ready to run out of time. If you're confirmed, would you release to the public this and other information about this office in Portland that I have been pushing to get unredacted? That's a simple yes or no question. Would you be willing to release it to the public?

Mr. WAINSTEIN. I won't have the authority to release, but I will assure you that I will push hard to release it to the maximum ability of the Department.

Senator WYDEN. Is there any reason why it shouldn't be released?

Mr. WAINSTEIN. I know there's some redactions that might have to do with personal information, private information, there might be sources and methods, but I can assure you that your concerns have been passed on. Folks at DHS are already engaged as of last week with folks in the General Counsel's office, and they're working hard to try to absolutely minimize the amount that's withheld.

Senator WYDEN. I will only tell you, you got to think—because this is what happened in my hometown. We saw what the Office of General Counsel said. You've got to think it's going on elsewhere.

And I will tell you, there's a pretty ominous history in this Committee, as Chairman Warner knows, about the use of dossiers. So, I'm going to get to the bottom of it. We'll continue to work with you between now and the time this Committee votes on your nomination. I'll have additional questions, and I hope we can have a second round, as well, Mr. Chairman. Thank you.

Mr. WAINSTEIN. Appreciate it, Sir.

Chairman WARNER. On this issue, I do think there's so many questions raised about Portland. I want to add my voice to Senator Wyden's. Obviously, you got to see this, you got to go through your appropriate channels once you get confirmed. But I hope as much as possible can be released as well.

And I think we should frankly give Members extra credit for actually being here in person, but that's not the rules.

So, we'll now go to Senator Cotton on WebEx.

[No response.]

Senator CORNYN. Mr. Chairman, we appreciate the extra credit.

Chairman WARNER. Well, if Tom doesn't poke his head up soon, then I'm going to go to you.

Senator Cotton, are you out there in ether land?

Mr. Vice Chairman, I'm going to make an executive ruling and go to Senator Cornyn.

Senator CORNYN. Thank you, Mr. Chairman.

Mr. Wainstein, congratulations on your nomination and thank you for your lengthy, distinguished public service. And I'm glad your family could be here. I'm sure they're very proud of you. And I'm sure your service is a family affair. And you're not just hanging out there on your own.

Senator Rubio talked about the work you did for Chinese clients and I don't imagine you had to register, I don't think you had to register, under the Foreign Agents Registration Act, did you?

Mr. WAINSTEIN. No. And I've never lobbied.

Senator CORNYN. Have you had some experience with the Foreign Agents Registration Act during your service?

Mr. WAINSTEIN. When I was in government, yes. The enforcement, that was under me or under our division.

Senator CORNYN. I think we've seen a number of instances that certainly have been disturbing to me where foreign governments have hired lobbyists here in Washington, DC, who have not reg-

istered under the Foreign Agents Registration Act, but rather under the Lobbyist Disclosure Act in order to obscure their representation of foreign governments.

But we're here because we were elected by our constituents to serve the people of this county and not foreign countries, and certainly not without our knowledge of who is advocating for policy changes in Congress.

Could you expand upon your views of the role of the Foreign Agents Registration Act and whether you believe that it is adequately serving its purpose?

Mr. WAINSTEIN. Thank you, Senator.

Look, I think you're putting a finger on a very critical issue. FARA has been around for a long time, but it hasn't been enforced with sufficient energy for decades, for as long as it's been around.

There has been a focus on FARA over the last few years. I know that the Justice Department has added resources to that, the National Security Division, and they're focusing on bringing cases. And I think they need to, because I think you're right: we need to know whom people are speaking for when they're advocating for a legislative change and the like. So, I agree with that. And to the extent that I'll have any role in that at I&A, will be minimal, but to the extent I would, I would do everything I can to encourage strong enforcement.

Senator CORNYN. Well there have been bipartisan bills knocking around here for a while now and we haven't been able to get those passed yet, but I would hope you would use the benefit of your experience and your perspective to advocate within the Administration for those changes so we can know it.

When we were considering the Foreign Sovereign Immunity Act to allow the 9/11 families an opportunity to file litigation over foreign financing of the terrorist attack on 9/11, one foreign government went so far as not just to hire U.S. lobbyists here in Washington, DC, but also to enlist the aid of veterans who came up here without disclosing who was paying for their hotel room and who was financing their presence here and purported to be advocating on behalf of United States military veterans. So, this takes a lot of different shapes and forms, but I think it's an insidious problem and one that I hope you will help us in whatever way you can to address.

I want to ask you, there's been an increased focus on domestic terrorism, obviously, since the events of a year ago on January the 6th. But what part of the U.S. Government in terms of law enforcement, particularly insofar as it affects the Intelligence Community, would have jurisdiction to investigate cases of so-called domestic terrorism?

Mr. WAINSTEIN. Well that's a good question, Sir. And it sort of goes to the point that we talked about, that I talked with the Chairman about—sort of the areas of overlap. And this is an area where there is shared jurisdiction—there are shared responsibilities—to do intelligence and law enforcement work, vis-à-vis the domestic terrorism threat. Obviously, the FBI takes point on domestic terrorism when it comes to doing investigations, building cases. And in fact, they will not do—and I think Jill Sanborn has testified to this, in fact—that they will not do intelligence work absent some

predicate. There has to be some predication under the FBI guidelines for them to do that.

I&A approaches it from a different vantage point. It doesn't have that predicate responsibility. It has limitations I discussed earlier—that it has to be pursuant to the departmental mission, it can't be focused on First Amendment rights, et cetera. But, they can do the open source searching or collection if it relates to a threat that DHS is actually tasked with protecting against. And so it's a complementary assignment of responsibility to the FBI and DHS and I&A.

And then the additional piece is that I&A plays a critical role in tying the Federal Government's responsibilities and efforts against domestic terrorism with the state, local, tribal, territorial, and private sector. And that's really the important piece and real huge value add that I&A brings to the domestic terrorism fight and, frankly, to the whole intelligence enterprise.

Senator CORNYN. Mr. Chairman, I have a few more questions and I'll wait for a second round, if that's your preference.

Chairman WARNER. I think that's probably Senator Heinrich's preference as well.

Senator Heinrich.

Senator HEINRICH. I'll try to be brief.

Mr. Wainstein, when the American public found out that Section 215 had been interpreted by the FISA Court to allow the collection of millions of Americans' phone records with a single court order, there was an understandable amount of disbelief and outrage in the public. And that precipitated Congress stepping in, passing the USA Freedom Act, which banned the bulk collection of American records, including those under 215, the FISA Pen Register Statute and National Security Letters. And so USA Freedom Act codified a national consensus that the government's collection of Americans' records in bulk infringed on the privacy and civil liberties of ordinary Americans.

Do you agree that this national consensus and the USA Freedom Act have it right in prohibiting open-ended bulk collection?

Mr. WAINSTEIN. Well, thank you, Senator. And thank you for having that question passed on to my colleagues at DHS, who passed it on to me. This is also a topic that Senator Wyden and I had a good discussion about.

Senator HEINRICH. I can imagine.

Mr. WAINSTEIN. Yes. And, look, let me say that bulk collection is a very difficult fraud issue because bulk collection by definition, as I understand it, means you might be looking for one bad guy—there might be one bad guy in the group—but you're going to then collect information that involves innocent people.

So, you can imagine a situation where there's a crime in a bus station at 2:00 in the morning and you want to get the manifest for the buses that pulled in at 1:00, because they might have contained the person who committed the murder or whatever. Well, you know that everybody in that bus didn't commit the murder, so you know you're getting the information of innocent people. That's the dilemma of bulk collection.

And so the question then is, is a particular collection—I think most people agree that that would be an appropriate investigative

step to try to solve that murder in the train station. But is it appropriate then to take that to millions of people's telephone records? And that's the issue that came up with the use of the 215 order for the telephone metadata program.

And just, I guess, two main points about that that occurred to me and that we discussed in our call with Senator Wyden. One is, even if that was arguably lawful—I mean different people, scholars agree about whether it was lawful and the FISA Court judges should have signed the order or not—there is an additional step there which is, is it appropriate? Does it meet the expectations of the American people and does it meet the expectations of Congress to use that tool in that aggressive way? That deliberation, that analysis, wasn't really done.

And the second piece to that—related to that—is this idea of secret law. That the reason why those expectations weren't measured against that program is because the program is classified, the FISA Court opinion authorizing the use of 215 for all that metadata was classified, and it couldn't be discussed openly in Congress—couldn't be discussed openly with the American people. So, people couldn't see, couldn't make their arguments one way or the other. And that really handicapped the use of that tool and makes it understandable why people reacted as they did when it got disclosed by leaking.

And I think it's a lesson. It's a lesson that I've taken from that. And that's not the only instance, I think. There are other instances post 9/11 where there was too much of a reliance on classification when there should have been more transparency. Live and learn. I'll tell you that if I go back into government, that's a lesson that I'll keep front and center.

Senator HEINRICH. Do you think Congress got it right in passing the USA Freedom Act as a response to those revelations?

Mr. WAINSTEIN. I think it's understandable why Congress did that. In terms of the need for 215 for non-bulk collection, I still see that that might be a need. I'm looking at it from the outside and whether that's a need.

Senator HEINRICH. Yes. But not for metadata that involves enormous numbers of innocent Americans.

Mr. WAINSTEIN. Exactly. It's just the fact that on the criminal side you have a grand jury subpoena; on the national security side, you don't have a comparable tool. And is that a problem? And I honestly don't know where the Administration is on that issue.

Senator HEINRICH. One of the challenges, obviously, at I&A is just that the challenges with workforce morale. That was true even before some of the things that you heard about in recent years with my colleagues in Portland, politicization of intelligence, et cetera.

So, if you're confirmed, what are your plans to turn that around? Because no organization can function well without high-quality morale in its ranks.

Mr. WAINSTEIN. No, that's a very important question. And, really, at the end of the day my main responsibility is as a manager, is helping to manage that organization. And as I said, that means supporting the people.

When I mean support, I mean, it's my job to help them do their jobs as well as they possibly can. They're really good people in I&A,

and I've been in organizations where morale ebbs and flows for a variety of reasons. The nice thing about that is that the right reasons come into play, that morale can go back up. And I think I know morale might have taken some hits at I&A, and I've heard about it. But I can tell you, the people are pretty energized as I've been dealing with them.

I think in terms of how to deal with any morale issues, one of the points is what you just put your finger on. They have to know that I have their back, that I'm going to ask them to do nothing more than give objective, straightforward analysis. That's all I want. And that politics is going to play no role in it. That approach—just as I felt as a prosecutor for years doing national security law work at DOJ—that's what people want to hear. They want to know that they're being valued for their work, for their contribution to national security, and not for whether their work butters the bread of one political party or another.

Chairman WARNER. And for Members who are going to be around for second round, I'll be happy to give up my time so we can get to them, but there are four, five Members who are on WebEx, so it will be a while.

Senator Blunt.

Senator BLUNT Thank you, Chairman.

Mr. Wainstein, talking on personnel issues, what do you see as the right balance between contractors and permanent employees? Particularly on the contractor side, what do they bring with them that it may be hard to replicate in the agency on a permanent basis?

Mr. WAINSTEIN. That's talking about management, Sir. That's exactly one of the first management questions I'm going to need to address, I think. And I've heard issues or concerns raised about an overreliance on contractors at I&A.

But look, there should always be a balance. Contractors provide really important value. They allow you to surge. If you have a need to surge personnel, as you know takes forever to hire people, go through the standard process of hiring folks into the Federal service. You can get contractors and surge quickly. They also are very helpful if you have particular needs or areas of expertise that you need to satisfy. Contractors can be brought in; you don't have to go train somebody else. So, there's real value to the contractors.

By the same token, especially when you're talking about analysts, the optimal is to have a traditional government employee who takes over the position, learns the area of analysis, and really develops expertise. It isn't somebody who comes in and out on six month assignments. That's the optimum, right? But there should be a balance.

And in positions that I've held or offices I've run I've always looked at that and made sure there's a balance. Here, my sense is there might have been an overreliance on contractors. I think that's being rectified. But one of the first things I do as a manager is to look at that on day one.

Senator BLUNT As we think about the growing importance of artificial intelligence and machine learning, and all of the public data that's out there, do you think we'll be able to keep up with the new techniques we need to sort this information down to where a career

individual can look at it? Or are we going to need some help just dealing with all of the information that's publicly available? It's not anything that we're getting some other way, but how do you propose we go through that in the most effective way and know what we can know from the publicly available information that's out there?

Mr. WAINSTEIN. Right. Well, I think you're raising sort of the dilemma of intelligence and the intelligence enterprise in general, which is there's always too much intelligence. And if you can't zero in on what you need, you'll lose the significance of the intelligence you need to focus on. And especially when you're talking about an entity like I&A that's looking at open source information, I mean, it's everywhere and there's so much of it.

So, there are a couple of things. One, you've identified one issue or one solution, which is artificial intelligence. I have not gotten a deep dive on what I&A is doing with artificial intelligence to try to get rid of the noise and focus on the important information. But my sense is that's an important part of their operations. And then also training and guidelines—making sure especially when we're talking about looking at people who might be somewhere around the line that separates violent extremists from just political extremists who have First Amendment rights to do what they're doing. You've got to be very careful about hoovering up everything about these people, because we're talking about U.S. person information. So, those guidelines have to provide strict guidelines or guardrails in terms of collection. So, that also helps to winnow down what you pull in. But that's a real challenge.

Senator BLUNT That's helpful. I think you're right. It's going to be one of the first things you have to deal with if you're confirmed for this job, is how are we later going to explain, looking back—and there's lots of information there—and we just couldn't figure out how to find it, even though it was publicly available information. And then the topic that you got into earlier—that's a different topic in my view of the things that aren't as available to the public as other things are. And the mix of the contractors and the full-time employees.

Is it your view that you can find the full-time professionals that you now need for the skill set that are willing to do this job as their career?

Mr. WAINSTEIN. Well, yes. And the main reason is because the people that I've been dealing with at I&A are top notch. And the way you recruit the best is that you perform the best. If you're known for performing, for being a strong entity, people want to join you. They want to be part of your team.

And so we will be, obviously—based on resources and we'll be talking to you about resources as well—resources permitting, we'll be looking for the best and the brightest. So, generally, we'll have access to them. But also there are others in the Intelligence Community who might be interested in coming over and doing some time on the domestic front.

Senator BLUNT Right. Thank you.

Thank you, Chairman.

Chairman WARNER. Senator King on WebEx.

[No response.]

All right. If Senator King is not going to join us, how about Senator Bennet on WebEx?

[No response.]

Going once, going twice.

Senator Casey?

Senator CASEY (via WebEx). Mr. Chairman, thank you very much. I'm happy to be jumping in the shoes of those Senators who you just named.

Chairman WARNER. Yes.

Senator CASEY. But thanks very much for this opportunity.

I'm going to thank the nominee, the candidate for nomination, Mr. Wainstein, for his public service. His service to the country has already been distinguished and we're grateful that he's willing to serve again. Certainly grateful that his family is helping him do that, as I know every public servant depends upon.

I wanted to ask about one topic and that's hospital security and especially ransomware attacks on hospitals. We know that increasingly, hospitals across the country have been targets for these ransomware attacks because of the patient data that these systems hold and the dependence we all have on telemedicine and what happens in those hospital systems when they have a ransomware attack. They have, of course, caused severe disruptions to patient care and have caused and will continue to cause problems for health care generally.

So, for Mr. Wainstein, I have two questions. One is to what extent does I&A's Cyber Mission Center support and provide analysis to the DHS Cybersecurity and Infrastructure Security Agency to track cyber threats to hospitals and health care networks throughout the country?

Mr. WAINSTEIN. Thank you, Senator. And I appreciate your question. It's going to a very, very serious threat.

Before I get into hospitals and health care, specifically, yes, the Cyber Mission Center. I've gotten briefed up on that. I'm generally familiar with how it operates and how it works closely with CISA. In fact, I had a long talk just recently with Jen Easterly, who is heading up CISA, doing a great job there. And we talked specifically about the integration of our office—with the I&A with CISA and how I&A needs to focus or channel targeted intelligence to CISA, as one of its customers, but also to the state and local authorities to let them know about threats they see in terms of specific attacks, specific types of ransomware attacks and techniques. About parties and groups that are engaging in ransomware and techniques for dealing with ransomware. So, my understanding is I&A is working on all those fronts. Working in a very good collaboration with CISA. And Jen and I agree that if I get on board, that one of the first things we'll do is sit down and see how that relationship is working and how it can work better. In terms of, well, I'll let—you say the second question and I assume that's about hospitals specifically.

Senator CASEY. Yes. I mean, obviously that's going to be critical, that coordination, so that you can provide both support and analysis.

The other question just pertains to a similar concern is if you're confirmed, will you commit to enhancing I&A's both the collection

and analysis on cyber threats to health care networks, to ensure that Federal agencies writ large are providing networks with the most up-to-date and actionable information?

Mr. WAINSTEIN. Yes. Senator. I can commit. I will commit to focusing like a laser on that issue. I mean, I can't think of—look, ransomware is terrible directed at anybody. But particularly, when it's directed at a health care organization, where health care organization is going to be threatened to be shut down, putting people's lives at risk. So, I would imagine that folks at I&A and CISA are very focused on this issue and that resources are being put to it. I know that ransomware is a big priority of Secretary Mayorkas. But I will, when I get in, I'll sit down and make sure I get a full briefing of what we're doing on the health care front and make sure that we're surging resources as needed.

Senator CASEY. Thank you very much.

Thanks, Mr. Chairman.

Chairman WARNER. Thank you.

Mr. WAINSTEIN. Thank you, Sir.

Chairman WARNER. The ever-patient and attentive Senator Sasse.

Senator SASSE. Felt like it was dripping with sarcasm, Mr. Chairman, but thank you.

Mr. Wainstein, congratulations on your nomination. Thanks for your past service. And not just thanks to you but your wife and daughters. I know one's away. But many times in the years, the decades of your government service, particularly after 9/11, I'm sure dad was away a lot. So, thanks to your family for the sacrifices you all made, as well.

Mr. WAINSTEIN. Thank you for that.

Senator SASSE. Do you believe that China sees themselves as engaged in a zero-sum technological race with the U.S.?

Mr. WAINSTEIN. Yes. I think they see themselves in a zero-sum technological race with us. And not just technological. Other aspects as well.

Senator SASSE. Can you explain to the American people what you think the CCP's goals are vis-à-vis America and how they seek to exploit America's open society, and to the degree that your views have probably changed over the last couple of decades? Everybody in 2000 had a much more benign view of what the CCP or what China and the U.S. might be able to do in cooperative competition. But we're in a different place now. Can you explain to us how you see their goals and how your view has changed, and when?

Mr. WAINSTEIN. That's a great question. I was talking to a friend about that just yesterday. Look, I did, sort of, have—maybe it's Pollyannaish—but I had some optimism that China would sort of come into the League of Nations, would operate as a responsible member of the world order, would respect the rules of the world order, and would compete fairly and become maybe a capitalist democracy of some sort.

I had retained vestiges of those hopes for quite some time after the turn of the century. I'll say that—and I mentioned this earlier—I'll say that sort of a rude shock that, kind of, made me realize that that was a pipe dream. When I was heading up the National Security Division, we started seeing this just sort of frontal

assault by China on stealing our technology. And they're very methodically going industry-to-industry, hoovering up as much as technology and stealing it. Chinese nationals and others are being deployed to do that. And it was clear to me that they were not playing according to the rules. In fact, they were starting a campaign to play in violation of the rules. And that's why we sounded the alarm, very much so in the time we were at National Security Division. Started up an Export Control Initiative that was focused largely on China. Doing speeches and press conferences and bringing cases, because I think a lot of people were slow to pick up that lesson. But I was probably slow to pick up, too.

And then since that time, in the last decade or 15 years, I think we've seen that that focus on stealing technology and intellectual property and willingness to bend the rules there is now pervasive—throughout sort of their whole approach to the west and the United States—military, political, and otherwise.

And so I find it to be a very alarming situation. And I agree with your characterization of their feeling that this is a zero-sum game against the United States.

Senator SASSE. Thank you.

I appreciated your back and forth with the Vice Chairman about three hours of work you did via a partner for the China National Offshore Oil Corporation. I think it's important for other Members of the Senate, maybe who are not on the Intelligence Committee, to understand what the National Offshore Oil Corporation does. They're essentially a bully for the PLA in the South Sea that tries to intimidate China's neighbors and help the CCP benefit from their civil-military fusion and try to harm other nations that believe in open navigation of the seaways, the rule of law, free trade, human rights, et cetera.

And so, I've been satisfied in the back and forth that you and I have had with how those three hours of billable work came about. I don't mean to speak for the Vice Chairman, but I appreciated the back and forth that you had with him. Would you be willing to pledge that you would do no work for CCP-affiliated organizations after your term of government service ends?

Mr. WAINSTEIN. Yes. I'm very willing to make that commitment. I'll make that commitment right now.

Senator SASSE. Thank you. I'm satisfied and look forward to supporting your nomination. And I think that our colleagues on this Committee have had a lot of discussions in a classified space in the past. And I think we should be evolving toward a standard where certain types of work with Chinese government-affiliated organizations in the past are not necessarily inexcusable if we understand the context, as yours was. But I think we should be moving toward a standard where all nominees for all national security affiliated organization—or affiliated responsibilities—agree that they would do no work for CCP-affiliated organizations in the future.

So, I look forward to supporting your nomination. I appreciated the distinction you drew about domestic political extremism versus violent extremism. And I know Senator Cornyn has more questions on that. So, I'm happy to move to that second round.

Chairman WARNER. I thank you, Senator. And I think the point you've made—worthy of consideration—that there are many of our

colleagues, as well as many businesses, that still don't understand this. And one of the critical reasons—and I appreciate so many Senators on both sides of the dais—who've been part of our so-called roadshows as we make the case in a classified setting to business and other entities about the other challenges the CCP poses.

There are two more Senators on WebEx and then we'll go to second round.

So, we're going back to Senator King.

Senator KING. Thank you, Mr. Chairman. Sorry, I wasn't there the first time. The network dropped out. None of us have ever had that happen before.

I appreciate the opportunity to talk to you, Mr. Wainstein. I want to talk about coordination and sharing. We have a huge sprawling intelligence enterprise, as you know. It involves something like 17 different agencies. On the domestic side, your most important counterpart I think is the FBI as well as local law enforcement. I would urge you to establish a regular systematic relationship with the FBI to be sure that you are sharing information, that you're not duplicating.

Is that something that you'd be interested in pursuing?

Mr. WAINSTEIN. Absolutely, Senator.

And let me thank you for the meeting the other day. And thank you, specifically, for that particular suggestion, where you suggested that I reach out to the FBI and my FBI counterparts and suggest that we have a, whatever it was—a monthly lunch. Besides enjoying a lunch, I think it's a great idea for purposes of making sure that we're knitting up and coordinating and sharing information sufficiently. So, absolutely, I agree with the sentiment. I agree with that specific recommendation.

Senator KING. Well, in serving on this Committee now for going on 10 years, it's been my observation that one of the tendencies in the Intelligence Community is to hold close the information that's gathered. Intelligence isn't any good unless it's shared, but particularly with the people that need to see it.

So, I think we classify too much. And I think, of course, sources and methods has to be top of mind. That has to be a consideration. But I hope as you work with the other agencies, and for example, we learn on September 11th, I mean, I'm sorry—on January 6—that there was intelligence somewhere in the system about potential violence, but it just never got to the Capitol Police.

So, the other issue about coordination is to be sure that there's serious sharing and that the I&A doesn't consider intelligence that it gathers as something that it owns, but it could certainly be helpful to either the FBI or local law enforcement.

Mr. WAINSTEIN. Thank you, Sir. I think you've addressed a couple of points there that I just would like to expand on. One is just information sharing generally, and as we discussed the other day, I lived and breathed the issues surrounding lack of information-sharing post-9/11 where—and just as you said with January 6, even more so. I think before 9/11, there was an inability to connect the dots. That was sort of the terminology that was used to characterize it. But a large part of it was just failure to share information that could have been shared. And it wasn't shared for a variety of

procedural reasons, cultural reasons, and the like. And we really had to go to work after 9/11 to break those walls down.

And I think in the counterterrorism space, especially in the international counterterrorism space between the Bureau and the CIA and others, the government has come a long way on that front. But, look, it's endemic in government work that siloing happens. People guard information, and don't think "sharing first." They think raising it up their chain before sharing. And so that's something that needs to be focused on.

Another issue you mentioned is classification and that's also an issue that's near and dear to my heart. I've been a member of the Public Interest Declassification Board for about seven years. I believe that Senator Wyden was involved in establishing that board. And our focus was on trying to increase transparency. And part of the transparency—part of the reason for that is to establish—give a basis for public trust, but also so that information can be more easily usable by our partners in the national security and law enforcement enterprise, especially—like state and locals. And so that's an issue that I&A is going to be very focused—is very focused on—since it really is the intelligence bridge to the state and locals.

Senator KING. Well, thank you. And I have some other questions about just how you deal with domestic violent extremists or domestic terrorism—and separated from politics—but I think other people are going to discuss that in a second round. So, I appreciate your willingness to re-enter government service and the straightforward answers you've given us today.

Thank you, Mr. Chairman.

Chairman WARNER. Thanks, Senator.

We have Senator Gillibrand on WebEx.

Senator GILLIBRAND (via WebEx). Thank you, Mr. Chairman.

Mr. Wainstein, thank you for being here. A "Cyber Scoop" article published this Monday describes 20 current Federal law enforcement contracts totaling \$7 million, which includes facial recognition services and software. A GAO report last year documented the expanding use of facial recognition technology in the U.S. Government for a variety of purposes, some of which have the potential for abuse. Privacy advocates and technologists have identified biases in facial recognition technology which stand to disproportionately impact Black and Asian people. Such mistakes could not only be discriminatory to our citizens but potentially disastrous to law enforcement and border patrol efforts.

If confirmed, will you commit to providing full and accurate accounting of I&A's collection, retention, and exploitation of intelligence information derived from the use of facial recognition technology, including listing all contracts and subcontractors used by DHS I&A, to this Committee?

Mr. WAINSTEIN. Thank you, Senator.

Yes. I'll make that commitment pursuant to our obligation to keep the Senate Intelligence and House Intelligence Committees fully and currently informed about our intelligence activities.

And I know that is—I don't know from being on the inside—there was no facial recognition technology I don't think when I was last in the government—but just reading about it, I've heard about

the concerns, about biases in the technology. And then just general concerns whenever you have a powerful new technology being used for intelligence purposes, it needs to be very carefully vetted, needs to be subject to careful constraints and safeguards and guidance. And so, I will make sure to be looking into that and working with the various parties, the privacy officer, civil liberties, and Civil Rights Office, et cetera, to make sure that any use of that kind of technology is going to be done in an appropriate way.

Senator GILLIBRAND. If I have time for one more question, I don't have a time keeper here.

Chairman WARNER. You've got it, go ahead.

Senator GILLIBRAND. Surveys among Federal workers, the Intelligence Community members in particular, have consistently rated DHS as one of the least satisfactory intelligence agencies to work for. I'll quote the 2014 GAO report. "I&A has also faced challenges in providing professional development opportunities for its workforce and experienced low morale scores and high rates of attrition, particularly among its lower level analysts. Regarding professional development, I&A historically did not institutionalize a commitment to investing in its workforce, according to I&A officials."

If confirmed, what steps will you take immediately to address workforce morale and training issues?

Mr. WAINSTEIN. Thanks, Senator.

That is a fundamental question, a fundamental issue and a challenge for me to—if I walk into I&A—is to assess what the morale of the workforce is and take every measure I can to improve that morale, which improves the effectiveness of the organization. Look, I've just stepped into management positions to a number of different entities throughout my government career. And as I mentioned earlier, morale can change. It can turn on a dime, but it also can improve on a dime. And it's a matter of doing some of the blocking and tackling management. Making sure that the line people have career path—career paths laid out, opportunities for details, training—that kind of thing. It's making sure the tone at the top is right, as I alluded earlier. That everybody on the line realizes that the supervisors and the head of I&A have their back, so that so long as they do their job right and honestly and objectively, they'll be supported.

They'll never get a message from the front office that they need to do anything for political reasons, which is antithetical to good morale in an intelligence agency. And, look, I think there are good people at I&A, really good people. And I think the word will get out, and is getting out to the rest of the Intelligence Community that, yes, those surveys are out there. But they are playing an important role in a critical mission of our government. And I think we're seeing that now. And so, when you have criticality, you have good work, and you have strong management, those are the makings of good morale. So, I actually expect the morale to end up being high. But thank you for that question. It's an important part of my job.

Senator GILLIBRAND. Thank you. And thank you, Mr. Chairman.
Chairman WARNER. Senator Cornyn?

Senator CORNYN. Mr. Wainstein, you were a co-founder of Former Republican National Security Officials for Biden and obviously engaged in the political process during the last election.

You organized and led a public letter calling the previous President a threat to the rule of law. Certainly, you were within your rights to express your point of view and support the candidate of your choice. But can you assure Americans with whom you disagree politically that you do not view them as a threat to the rule of law, absent some criminal conduct?

Mr. WAINSTEIN. Absolutely, Senator. And thank you for that question. And I want to thank Senator Rubio for letting me know that question might be coming. And if you permit me, I'll spend a minute or so just giving you my position on that.

That is a completely fair and appropriate thing for you to be asking about. You should ask about the political activities of people who come before you to take these positions in the national security and the law enforcement enterprises, because the last thing, as I said earlier, the last thing we need is anybody in these positions of authority in the national security apparatus who is allowing, injecting politics, into decisionmaking, it undercuts the effectiveness and the credibility of the national security apparatus.

So, fair for you to look back at it, at political past. The thing about me is there really is not much political past up until 2020. I've been a government guy, was promoted by Administrations on both sides and basically my job was to do what was best for the American people and not for a particular political party.

I felt strongly about the last election. And I think an important point here is the thing that I felt most strongly about—and you alluded to that letter I organized—was the concern that there was politicization of the law enforcement enterprise at the Justice Department and that's the centerpiece of that letter. And it was that concern that really made me feel like I should be vocal. And that's the concern that I think you have, right? That's what I'm worried about, politicization.

So, I've spent my life as a public servant resisting politicization. I did that with my advocacy last year and you can be sure if I end up at I&A, that's the position and the principle I'm going to adhere to. So, thank you for that question, Sir.

Senator CORNYN. We talked a little bit about domestic terrorism and whose purview that falls within in terms of law enforcement. And I think you said the FBI would certainly take the lead and absent some foreign nexus, you would agree with me that that would not be within the purview of organizations like the Central Intelligence Agency and other parts of the IC, correct?

Mr. WAINSTEIN. Certainly. Domestic-focused intelligence work would not fall within the purview of the CIA, yes.

Senator CORNYN. And that would include use of the Foreign Intelligence Surveillance Act, correct?

Mr. WAINSTEIN. By the CIA, yes.

Senator CORNYN. Yes, well, the FBI—

Mr. WAINSTEIN. Against the domestic terrorism threat, yes.

Senator CORNYN. As you know, having worked with the FBI—it's the FBI that fills out the applications for FISA warrants. And indeed one of the concerns that I think everybody should have is

about the abuse of some of those tools like the Foreign Intelligence Surveillance Act to surveil American citizens, particularly based on perjured testimony. When you read Inspector General Horowitz's report on Crossfire Hurricane as it documented the perjury of one of the FBI lawyers and the various other abuses of the process, did that cause you concern?

Mr. WAINSTEIN. Yes, it certainly did.

Senator CORNYN. And one of the problems we have here—you talked about 215—I support the reinstatement of Section 215 of the Foreign Intelligence Surveillance Act, but as I've told the Director of National Intelligence, every time that the skeptics talk about the power that is given to the Intelligence Community under the supervision of the Foreign Intelligence Surveillance Court and Members of Congress, every example of an abuse of that power makes it harder and harder for us as a political matter to get Congress to pass or reinstate those authorities.

So, let me turn to the border. Obviously, when you see two million people roughly plus coming across the border during this last year, and instances of drug trafficking and seizures, people with criminal records, potentially people from other countries of special concern, for example, in the Del Rio sector. When I was there last, they said they detained people from 150 different countries coming across the Del Rio sector alone. From a national security perspective, is that a concern of yours?

Mr. WAINSTEIN. Absolutely. Look, the border as long as I've been engaged in national security has been an area of concern because of the possibility that wrongdoers are going to get into the country that way, and then contraband and the like, also from a law enforcement perspective. So, yes, that is a concern.

Senator CORNYN. And I realize this is not necessarily within your authority or your bailiwick, but I want to use the opportunity to highlight the fact that the Secretary of Homeland Security has actually signed a non-enforcement directive saying that the border patrol should not, and ICE should not, detain anybody who was guilty of illegal entry into the country—unless they've committed other crimes. And the problem remains that that the non-enforcement posture of this Administration and the Department of Homeland Security are operating as a substantial pull factor for people to leave their homes and come into the country illegally.

Are you aware of some of the most recent statistics with regard to those who have come here and been released on notice to report? Are you familiar with that process when somebody claims asylum? They're given a either a notice to appear in court or a notice to report to an ICE office. Are you familiar with that?

Mr. WAINSTEIN. Yes, Sir. I'm generally familiar with it. Yes.

Senator CORNYN. And does it concern you that the——

Chairman WARNER. Senator, Senator, I will get you a third round.

Senator CORNYN. Pardon me?

Chairman WARNER. You are at seven and a half minutes now. Can I get you back on the third round? Senator Wyden is next.

Senator CORNYN. I just have one more question, but I am happy to do a third round.

Senator WYDEN. Thank you, Mr. Chairman.

Just two quick points, Mr. Wainstein. First, I'm going to be asking you written questions with respect to the dossiers and whether they're going to be released, and how they're going to be used. And I'm going to need those answers before this Committee moves forward. That's number one.

Number two, there's another part to this 215 debate. This of course is the bulk collection of the phone records on millions and millions of law-abiding people, where I am trying to square your public testimony with the written answers that you gave us to the pre-hearing questions. Let me make sure we walk through this quickly.

In your public testimony about the bulk collection, all these phone records, you said and I quote, "that this part of the law was significantly more protective of civil liberties than grand jury subpoenas." You also testified that if the government wanted to collect—and this is a quote—"an obviously innocent day-to-day action, I think you're going to have some questions from the FISA Court judge." Now, on the basis of the written answers to the pre-hearing questions, you knew that the government was secretly using Section 215 to collect the phone records of millions of innocent Americans without any subsequent review by the FISA Court. So, for the Committee—and I'll be asking more about this in writing as well—reconcile what you knew at the time, based on your answers in your public testimony, because I'm having trouble reconciling the two. And maybe there's something else I need to have information from you on.

Mr. WAINSTEIN. Thank you. I think I can help you a little bit. And I appreciate you raising this the other day and giving me a heads up about this.

So, let me just, so everybody's on the same page, you're asking about testimony I gave in September, 2009, that was after I left government.

Senator WYDEN. In public.

Mr. WAINSTEIN. In public testimony, that was in a hearing that related to the reauthorization of certain parts of the Patriot Act, including the 215 provision. I was asked to testify as somebody who had worked in that area. I had left the National Security Division where I had direct responsibility for that area as of late 2007 or early 2008. But I opined about the importance of reauthorizing those three—I think it was three sections that were up for reauthorization at the time, including 215. And the point that I was making was actually a fairly simple point, and as you and I discussed, the premise for 215—for enacting 215 as it was enacted in the Patriot Act in 2001—was on the side of—on the criminal side, criminal investigators and prosecutors could use a grand jury subpoena when they needed to get records—any physical document, or any physical thing, but really records. A prosecutor could just issue a grand jury subpoena and say I want those intel records, I want those bank records, what have you. And I did that thousands of times in my career. You don't have to go to a judge. The comparable provision for getting records on the national security side under FISA was 215 that required the Justice Department attorneys to go to a judge, explain to the judge why there was information that was relevant to a terrorism investigation, and get—per-

suade that judge to authorize that order. So, in my mind it's always better to have a judge in the process, and that that's more protective of civil liberties because someone couldn't just go use 215 for an innocent purpose, as I was explaining, to find out about his girlfriend's whatever—records or something like that. So, that was the point I was making. That it's more protective of the civil liberties.

The issue that we're talking about in terms of the fact that it had been used and authorized by, I think, a series of FISA Court judges—that the 215 order could be used to get all this metadata, telephone metadata—that was actually raised earlier in the hearing that I testified in. David Kris, who was then the sitting Assistant Attorney General for National Security, made the exact same points I just made about the value of having a judge in the process and the importance of that to civil liberties. He also mentioned in his written statement—he specifically singled out to the Members that there was a classified collection under 215 that some Members knew about, that he was happy to brief those Members about that classified collection. And that's the metadata program. And so, that was already out there; that was sort of the baseline for the hearing. I was there for that. And so, when I was talking about it, I was talking about how Section 215 was designed vis-à-vis how the grand jury subpoenas were designed and that's still, I think, a valid argument for 215.

Senator WYDEN. I will just tell you my time is up. I continue to find it hard to reconcile what you knew, and at the time you gave this public testimony, when you talked, and I quote here, about how 215 was “significantly more protective of civil liberties,” you knew that the government was secretly using Section 215 to collect all these phone records on millions of innocent Americans without any subsequent review by the FISA Court.

And so, this is not just a policy question. With respect to 215, Members have differing opinions. I'm going to have to get some more information from you with respect to reconciling what you now have indicated you knew at the time, which does not seem to me to be consistent with what you said publicly. We'll continue this discussion.

And thank you for the extra round, Mr. Chairman.

And Mr. Wainstein, we are going—on both dossiers and this 215 matter—we're going to need some additional information. And as I told you when you came in, I'll continue the discussion with you.

Thank you, Chairman.

Mr. WAINSTEIN. And if I may, Senator, just a couple of points.

One, at that point—by the way—I'd been out of the National Security Division for two years. I didn't know actually what was still running or not. I knew that it had been authorized. At some point I learned it had been authorized previously, before my coming into the National Security Division. But also you said that there's—these collections were done without review of the FISA Court. My understanding is the FISA Court authorized and reauthorized it a number of times, so I think there was sort of continuing review of the—

Senator WYDEN. Well, I'm not sure. I'm not sure that's helpful to you because your written answers to the pre-hearing questions

indicated that you knew that the government was secretly using 215 in a way that didn't have any subsequent review by the FISA Courts. So, we're going to have to go over this some more, and I'll continue that discussion.

Thank you, Mr. Chairman.

Chairman WARNER. Before I go back to Senator Cornyn, Senator Blunt, do you have anything else? Senator Cornyn? We're in the seven minute round area.

Senator CORNYN. Mr. Wainstein, we were talking about the border.

Mr. WAINSTEIN. Yes.

Senator CORNYN. And as Under Secretary for Intelligence and Analysis, what will be your role in an official capacity with regard to border enforcement and threats to the Homeland coming across the border?

Mr. WAINSTEIN. I believe, and I'll have still a lot to learn about what I&A's role is at the border—my understanding is it's sort of twofold. One is to provide intelligence and information to the range of people or actors, enforcement agencies, that are involved with law enforcement at and around the border. So, making sure that state and local, territorial, and tribal partners who are down around the border are getting as much intelligence as we can find, about what they can expect to be seeing crossing the border illegally. What kind of migration patterns there are, this kind of thing. So, on one hand I&A's job is to provide that intelligence to those agencies as well as among the Federal agencies and within DHS. But then also to collect intelligence that might be gleaned from people who are coming across the border. So, with whether there's people who are brought, taken to secondary and asked questions, this kind of thing, intelligence, important information that can be helpful to the Intelligence Community, to DHS, to our state and local partners, is developed and we then are responsible for helping to channel that intelligence into I&A, and then make that into actionable analytical product.

Senator CORNYN. As you know, given the volume of people that have come across the border in the last year—some two million—that by the way doesn't count the so-called "getaways." It's always struck me as odd that we try to estimate people we never see. The number—but we know it's more than are actually detained along the border. And among those law enforcement has, identified—people with criminal records, multiple offenses, drug smuggling, sex offenders, and the like. Currently there's no process in place to actually do biometric identification of all the people who are coming across the border. As a law enforcement professional, does it concern you that people are coming across the border for whom we have no record, positive or negative, and then they are released into the heartland of the country and given a notice to report or a notice to appear? And just in the last six months, 50,000 of them did not show up at an ICE office, given their notice to report and thus violating the terms of their release.

Do you view that as a national security and a law enforcement vulnerability?

Mr. WAINSTEIN. It is clearly. It's always a concern for those in national security and in the Intelligence Community when you

have a blank space, when there is a lack of information about people here in the United States and what they might do. And so, the more that we can learn about and from the people who are coming across the border the better. So, yes, as an intelligence guy, I want to know more rather than less. And so, whether that's from interviews, from making sure they go through the process, or what have you, absolutely. It's better to know more. And whether it's coming across the southern border, whether it's coming through our airports and ports, we want to know more rather than less about the people who are here in the United States.

Senator CORNYN. And do you, finally, consider our lack of knowledge about those individuals a national security vulnerability?

Mr. WAINSTEIN. I guess I'd say that a lack of knowledge about people coming into our country is troubling because we want to know more about these people than less. We want to have an understanding whether somebody is coming in for malign purposes, whether it's to launch a terrorist attack, or what have you. So, absolutely whether it's people coming across the border, whether it's people coming through airports, whether it's people coming in as refugees, what have you. I know this is the approach that DHS would want to have more of than less.

Senator CORNYN. So, that would be a yes, it is a vulnerability?

Mr. WAINSTEIN. Well, vulnerabilities arise from lack of intelligence and information. And the intelligence enterprise is all about, as you know, as this Committee and you know all too well, is all about minimizing vulnerabilities. You minimize that by having information before a threat becomes a reality. So, my feeling is that we reduce our level of vulnerability, the more knowledge we have.

Senator CORNYN. Thank you.

Mr. WAINSTEIN. Thank you, Sir.

Chairman WARNER. I believe Senator King has one more question from WebEx.

Senator KING (via WebEx). Thank you, Mr. Chairman.

Mr. Wainstein, I want to take you back to law school. You get confirmed in this position. One of your analysts walks in one day and says we have information on a group called Sons of Liberty out in one of the Midwestern states. They seem to be very strong supporters of conservative causes. We've heard a tip that they may be planning some kind of action involving violence at the U.S. Supreme Court. What do you do?

Mr. WAINSTEIN. That's a great question. And I have a very vague recollection of law school. But I remember getting a few of those questions in classes and getting called on and hopefully I'll do better than I did in law school.

That's a very realistic scenario, and that goes to the issue that I think we discussed earlier, which is, given where domestic terrorism is coming from—it's coming from a range of motivations—but some of it is coming from attitudes about politics and political views. That makes the intelligence operations in that space incredibly fraught, incredibly difficult, because you cannot—you're forbidden at DHS and every part of the Intelligence Community and law enforcement community in the Federal Government—you're forbidden from doing investigative, taking investigative steps just be-

cause somebody is exercising First Amendment rights. And you can exercise your First Amendment rights by saying something that other people would think is completely absurd and extreme, but so long as it's not inciting violence, you're allowed to do it. I&A cannot and should not be involved in collecting against that person or that party.

It's the last piece of what you said, the analyst came in with that got my attention: that there's an indication that this group is planning some kind of violence, because that's the dividing line. If there is sufficient basis to believe that this group is planning a violent act of some kind, especially a violent act like this which is sort of very clearly terrorism seemingly, if it's intended to influence the government by attacking the Supreme Court, then that makes it a fitting and appropriate target for intelligence collection.

So, it really would come down to how much of a factual basis is there to believe that that group is going over that line into violence. And it can't be that there's some remote possibility that it could happen or that similar groups in the past have gone from being politically extreme to being violent. It has to be that there's some evidence that this group is in fact crossing over that line.

Senator KING. I think you're right. I think violence is the dividing line. I will share you my favorite interchange with the law professor who once asked me a question. I didn't know the answer but I bravely guessed and said "yes," and the professor said, Mr. King, a shorter and more accurate answer would have been "no."

Thank you, Mr. Wainstein.

Mr. WAINSTEIN. Thank you, Sir.

Chairman WARNER. Mr. Wainstein, welcome back to the arena. You have proven me completely wrong. I thought we would glide through this hearing in 45 minutes. And you saw from both sides of the dais enormous amount of interest.

I personally want to look forward to supporting you. I think you have absolutely the right experience at this moment in time for a part of the IC and law enforcement that I kind of understand its role, but candidly still don't fully understand. In the hypothetical that Senator King posed, if this group which had been maybe throwing out violent threats, but somehow move from violent threats to a plan of action, at what point you continue at I&A versus turn it all over to FBI? And I don't expect you to frankly have that whole answer, because I think that this part of DHS is probably an area that's still evolving, particularly in light of the fact that when it was set up after 9/11, I think the general presumption was these kind of threats were going to be generally foreign-originating. And the unfortunate circumstances that we have right now is that there are some of these instances where these threats may be domestic-oriented. How we work that all through will be one of your responsibilities, as well.

I appreciate the fact that you are constantly affirming the workforce. I think that's the right thing to do, but clearly the data indicates you've got a workforce that is at least at this moment in time needs a strong leader, needs a permanent leader, needs a Senate-approved leader.

I appreciate your candor. I do think some of the comments, again, my colleagues have raised—and Senator Sasse and I work

really well together on a lot of issues around China—but I think we're all evolving on China. I think it's really important that when we talk about China as well, we put that extra asterisk in there, that our beef is with the CCP and leadership of Xi Jinping and it's not with the Chinese people or the Chinese Diaspora, wherever they are.

But as I kind of dig into this a little bit, maybe I have a little more understanding why this kind of job with this kind of challenge—even though on the org chart is not as high as some of the jobs you've had in the past—it might be the kind of thing to bring you back into government service.

So, I thank you for your testimony. I thank you for your thoughtful answers. I thank your wife and your three daughters, and I will still be expecting validation that Ellie, I think, is the fourth—that she is actually giving up time at Berkeley to watch this hearing. You can quiz her on the fact that I mentioned her twice or you can see if she actually did follow through.

Mr. WAINSTEIN. I will put her to the test.

Chairman WARNER. As I mentioned to Members and staff, if people have got additional questions please submit them by Friday the 15th, at close of business, and clearly you'll get some of those. And my hope is that we can move quickly on this nomination. And my hope is we can get some help from some of my Republican friends because there have been too many people held up for too long. I think the sooner you get into this job, the better for DHS, the better for our I&A, and the better for our country.

And with that—any last comments?

Mr. WAINSTEIN. No, I just want to thank you for holding this hearing. I appreciated the engagement of you and all the Members. And I join with you in the fervent hope that I'll get confirmed, and then I'll get in there quickly. There's a lot of work to do and I'm anxious to get in there and work with DHS, and work with you and your colleagues.

Chairman WARNER. Thank you so much. The hearing is adjourned.

[Whereupon at 3:39 p.m., the hearing was adjourned.]

Supplemental Material

**SELECT COMMITTEE ON
INTELLIGENCE**

UNITED STATES SENATE



**QUESTIONNAIRE FOR COMPLETION BY
PRESIDENTIAL NOMINEES**

SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

**QUESTIONNAIRE FOR COMPLETION BY
PRESIDENTIAL NOMINEES**

PART A - BIOGRAPHICAL INFORMATION

1. FULL NAME: Kenneth Leonard Wainstein
OTHER NAMES USED: n/a
2. DATE AND PLACE OF BIRTH:
February 14, 1962
Palo Alto, California
- CITIZENSHIP: U.S. citizen
3. MARITAL STATUS: Married
4. SPOUSE'S NAME: Elizabeth Haynie Wainstein
5. SPOUSE'S MAIDEN NAME IF APPLICABLE: Virginia Elizabeth Haynie
6. NAMES AND AGES OF CHILDREN:

REDACTED

7. EDUCATION SINCE HIGH SCHOOL:

<u>INSTITUTION</u>	<u>DATES ATTENDED</u>	<u>DEGREE RECEIVED</u>	<u>DATE OF DEGREE</u>
University of California Berkeley School of Law	1985-1988	JD	May 1988
University of Virginia	1980-1984	BA	May 1984

8. EMPLOYMENT RECORD (LIST ALL POSITIONS HELD SINCE COLLEGE, INCLUDING MILITARY SERVICE. INDICATE NAME OF EMPLOYER, POSITION, TITLE OR DESCRIPTION, LOCATION, AND DATES OF EMPLOYMENT).

EMPLOYER	POSITION/TITLE	LOCATION	DATES
Café Studios	Host	Washington, DC	2/20 – 2/21
Davis Polk & Wardwell LLP	Partner	Washington, DC	6/17 – present
Burke & Herbert Bank	Member, Board of Directors	Alexandria, VA	4/16 (est.) – present
Bipartisan Commission on Biodefense, sponsored by the Hudson Institute	Commissioner	Washington, DC	12/14 – present
Security Advisory Board, Alclear, LLC (d.b.a CLEAR)	Member	New York, NY	11/14 – present
Cadwalader, Wickersham & Taft LLP	Partner	Washington, DC	3/12 – 6/17
O'Melveny & Myers LLP	Partner	Washington, DC	2/09 – 3/12
Georgetown University Law Center	Adjunct Professor	Washington, DC	1/09 (est.) - present
United States Government Executive Office of the President	Assistant to the President for Homeland Security and Counterterrorism	Washington, DC	3/08 – 1/09
United States Government Department of Justice	Assistant Attorney General for National Security	Washington, DC	9/06 – 3/08
United States Government Department of Justice	United States Attorney for the District of Columbia	Washington, DC	5/04 – 9/06
United States Government Department of Justice	Chief of Staff Federal Bureau of Investigation	Washington, DC	3/03 – 5/04
United States Government Department of Justice	General Counsel Federal Bureau of Investigation	Washington, DC	7/02 – 3/03
United States Government Department of Justice	Director Executive Office for United States Attorneys	Washington, DC	8/01 – 7/02
United States Government Department of Justice	Interim United States Attorney, Principal Assistant United States Attorney, Deputy Chief of the Superior Court Division and Deputy Chief and line prosecutor in the United States Attorney's Office for the District of Columbia	Washington, DC	10/92 – 8/01
United States Government Department of Justice	Assistant United States Attorney in the Criminal Division of the United	New York, NY	10/89 – 10/92

	States Attorney's Office for the Southern District of New York		
United States Government United States District Court	Law Clerk for Judge Thomas Penfield Jackson	Washington, DC	8/88 – 8/89
Gibson, Dunn & Williams LLP	Summer Associate	New York, NY and Washington, DC	6/87 – 8/87
Hunton & Williams LLP	Summer Associate	Washington, DC	6/86 – 8/86
Cleary Gottlieb Steen & Hamilton LLP	Securities Paralegal	Washington, DC	10/84 – 5/85
United States Government US House of Representatives Office of Congressman Carl D. Perkins	Legislative Correspondent	Washington, DC	6/84 – 10/84
United State Government Internal Revenue Service General Counsel's Office	Clerk	Washington, DC	5/83 – 8/83
United States Government Internal Revenue Service General Counsel's Office	Clerk	Washington, DC	5/82 – 8/82
United States Government Department of Defense Office of the Secretary of Defense	Clerk	Washington, DC	5/81 – 8/81

9. GOVERNMENT EXPERIENCE (INDICATE EXPERIENCE IN OR ASSOCIATION WITH FEDERAL, STATE, OR LOCAL GOVERNMENTS, INCLUDING ADVISORY, CONSULTATIVE, HONORARY, OR OTHER PART-TIME SERVICE OR POSITION. DO NOT REPEAT INFORMATION ALREADY PROVIDED IN QUESTION 8).

1. Member of Public Interest Declassification Board (2013 – 2020)
2. Member of CIA General Counsel External Advisory Board (2013 est. – present)
3. Member of Director's Advisory Board of the National Counterterrorism Center (2014 – present)
4. Chairman of the National Security Agency General Counsel Advisory Board (2014 – 2016 est.)
5. Chairman of the New York State Counterterrorism Advisory Panel (2017– 2018)
6. Member of the Judge Webster Commission on the FBI, Counterterrorism Intelligence and the Fort Hood Shootings (2009– 2010)

10. INDICATE ANY SPECIALIZED INTELLIGENCE OR NATIONAL SECURITY EXPERTISE YOU HAVE ACQUIRED HAVING SERVED IN THE POSITIONS DESCRIBED IN QUESTIONS 8 AND/OR 9.

I initially developed my intelligence and national security expertise in the immediate aftermath of the 9/11 attacks. Prior to that point, I had served for 12 years as a federal line prosecutor and supervisor, focusing primarily on criminal justice issues with occasional involvement in prosecutions involving national security issues like export control, international terrorism and espionage. After 9/11, however, my focus turned largely to the counterterrorism effort and the federal government's broader national security program. As Director of the Executive Office of U.S. Attorneys in 2001-02, I coordinated the efforts of the federal prosecutors' offices to reorient their enforcement program toward counterterrorism, integrate their operations with those of the Intelligence Community and generally become more active participants in the counterterrorism effort.

From 2002-04, I served as FBI General Counsel and then Chief of Staff. In those positions, I was centrally involved in the Bureau's efforts to develop its intelligence processes and capabilities and transform itself into a full-fledged intelligence agency. I also worked closely with Director Mueller on the various national security issues that arose during that time frame.

After 2.5-years as the Interim and then the Senate-confirmed United States Attorney in the District of Columbia, I was nominated and confirmed as the first Assistant Attorney General for National Security. In that position, I worked with my colleagues to establish and build the National Security Division, which was the first new DOJ division in about a half century. As Assistant Attorney General, I served as the Justice Department's statutorily-designated liaison with the Intelligence Community. I also worked with my NSD colleagues to, among other things, manage the integration of the Department's national security prosecutors and its intelligence attorneys in the Office of Intelligence Policy and Review into a single division; oversee all of the national security prosecutions around the country; propose and testify about national security legislation; build an enhanced process of oversight of FBI national security investigations; and start an initiative to increase enforcement of export control violations.

In 2008, I was asked by President Bush to serve as his Homeland Security Advisor (Assistant to the President for Homeland Security and Counterterrorism). In that position, I advised and briefed the President on counterterrorism and homeland security matters, convened and chaired meetings of the Cabinet Officers on the Homeland Security Council, and oversaw the inter-agency policy making and coordination process for counterterrorism, infrastructure protection, biodefense and pandemic planning, disaster response and recovery and other homeland security matters.

Since my departure from government service on Inauguration day of 2009, I have remained involved in national security matters, including through the government affiliations listed in Question 9 above. My participation with these governmental national security entities -- along with my membership on various private national security related organizations (see Question 12 below) and my last twelve years of teaching National Security Law and Investigations at Georgetown Law School -- have helped to keep my knowledge and experience current and up to date on the evolving issues in the national security area.

11. HONORS AND AWARDS (PROVIDE INFORMATION ON SCHOLARSHIPS, FELLOWSHIPS, HONORARY DEGREES, MILITARY DECORATIONS, CIVILIAN SERVICE CITATIONS, OR ANY OTHER SPECIAL RECOGNITION FOR OUTSTANDING PERFORMANCE OR ACHIEVEMENT).

College: Phi Beta Kappa (1984)
Graduation with High Distinction (1984)

Law School: California Law Review (1986-88)
Moot Court Board (1986-88)

Department of Justice: The Edward J. Randolph Award for Outstanding Service to the Department of Justice (2008)
Department of Justice Director's Awards for Superior Performance (2) (1997 and 2000 est.)
Special Achievement Awards as an Assistant U.S. Attorney (several) (1990's)

Bar Association of DC Lawyer of the Year Award, Bar Association of the District of Columbia (Est. 2005)

12. ORGANIZATIONAL AFFILIATIONS (LIST MEMBERSHIPS IN AND OFFICES HELD WITHIN THE LAST TEN YEARS IN ANY PROFESSIONAL, CIVIC, FRATERNAL, BUSINESS, SCHOLARLY, CULTURAL, CHARITABLE, OR OTHER SIMILAR ORGANIZATIONS).

Affiliations with governmental organizations are listed above in question #9.

ORGANIZATION	OFFICE HELD	DATES
National Association of Former United States Attorneys	Officer and Board Member	2010-present
Council on Foreign Relations	Member	2011-present
DC Affordable Law Firm	Member, Advisory Board	2019-present
St. Stephen's & St. Agnes School	Member, Board of Governors	2020-present
States United Democracy Center	Member, Advisory Board	2020-present

National Security Institute, George Mason University	Member, Advisory Board	2018-present
The Bar Association of the District of Columbia	Co-Chair of the Committee on National Security Law, Policy & Practice	2009-2018
Old Dominion Boat Club	Member	2005-present
Center of Cyber and Homeland Security at George Washington University	Member, Steering Committee	2010-2017
St. Mary's Catholic Church	Parishioner	1962-present
Old Presbyterian Meeting House	Member	1993-present
University of Virginia Alumni Association	Member	1984-present
Edward Bennett Williams Inn of Court	Barrister	2000 (est.)-present

13. PUBLISHED WRITINGS AND SPEECHES (LIST THE TITLES, PUBLISHERS, BLOGS AND PUBLICATION DATES OF ANY BOOKS, ARTICLES, REPORTS, OR OTHER PUBLISHED MATERIALS YOU HAVE AUTHORED. ALSO LIST ANY PUBLIC SPEECHES OR REMARKS YOU HAVE MADE WITHIN THE LAST TEN YEARS FOR WHICH THERE IS A TEXT, TRANSCRIPT, OR VIDEO). IF ASKED, WILL YOU PROVIDE A COPY OF EACH REQUESTED PUBLICATION, TEXT, TRANSCRIPT, OR VIDEO? Yes

I have tried to recall all writings, speeches or remarks that would be responsive to this question. If additional materials are identified, those materials will be reported to the Committee promptly. Please note that certain such materials may not be available currently in digital form or in hard copy.

1. Monthly podcasts of United Security with Lisa Monaco on Café Studios -- 2020-21.
2. Guest podcast appearance on Karen Greenberg's Vital Interests Podcast – May 11, 2021.
3. Guest appearance in 2018 for the National Security Law Today podcast of the ABA Standing Committee on Law and National Security. This is the link to that podcast:
<https://soundcloud.com/nsltoday/answering-tough-questions-with-ken-wainstein>
4. Op-ed with Lisa Monaco on national security leadership – August 21, 2019.
https://www.washingtonpost.com/opinions/america-please-look-beyond-your-self-interest-and-do-your-duty/2019/08/21/1206dd94-c448-11e9-9986-1fb3e4397be4_story.html
5. Op-ed with Lisa Monaco on domestic terrorism – November 5, 2018.
https://www.washingtonpost.com/opinions/weve-declared-war-on-foreign-terrorism-why-not-do-the-same-for-domestic-threats/2018/11/05/707c3d5c-e13a-11e8-ab2c-b31dcd53ca6b_story.html
6. Article I wrote with A. Joseph Jay III for Bloomberg Law, Independent Investigations in Higher Education – July 11, 2016.
7. Article I wrote with A. Joseph Jay III as part of a symposium, *The Unique Aspects of Independent Investigations in Higher Education*, American Journal of Trial Advocacy; Birmingham Vol. 39, Iss. 3, (Spring 2016), 587-94.
8. Speech at the Ethics and Compliance Officer Association Sponsoring Partner Forum on May 9, 2013, Cyber Threat and Response.

9. Speech at The Heritage Foundation on May 8, 2013, *The Changing Nature of Terror: Law and Policies to Protect America*.
10. Article I wrote for the 2009 NYU Center on Law and Security Magazine, *Terrorism Prosecution and the Primacy of Prevention Since 9/11*.
11. The University of California, Berkeley School of Law Transcript, *The USA Patriot Act*, Spring/Summer 2003.
12. My law school comment: *Judicially Initiated Prosecution*, 76 CALIFORNIA LAW REVIEW 727 (1988).
13. Client Alerts: I have been listed along with other attorneys on client alerts about compliance and civil and criminal enforcement issues issued by my law firms over the last ten years.
14. Panels and Conferences: I have spoken on numerous panels and at legal and professional conferences, but I'm not aware of any available transcripts or recordings.
15. Congressional Testimonies over the last ten years:
 - A. Hearing on the Modus Operandi and toolbox of Russian and Other Autocracies for Undermining Democracies Throughout the World, before the Subcommittee on Crime and Terrorism of the Senate Judiciary Committee on March 15, 2017.
 - B. Hearing on Election Interference: Ensuring Law Enforcement is Equipped to Target Those Seeking to do Harm, before the Senate Judiciary Committee on June 12, 2018.
 - C. Hearing on Outside Views on Biodefense for the Department of Defense, before the Subcommittee on Emerging Threats and Capabilities of the House Armed Services Committee on February 3, 2016.
 - D. Hearing on the Reauthorization of the FISA Amendments Act, before the Senate Judiciary Committee on May 10, 2016.
 - E. Testimony in support of Stevan Bunnell in his confirmation hearing for the position of General Counsel of the Department of Homeland Security, before the Senate Committee on Homeland Security and Governmental Affairs on September 18, 2013.
 - F. Hearing on Counterterrorism Policies and Priorities: Addressing the Evolving Threat, before the Senate Foreign Relations Committee on March 20, 2013.
 - G. Hearing on Cybersecurity and U.S. National Security, before the Senate Armed Services Committee on July 14, 2016.
 - H. Hearing on National Security Leaks, before the Subcommittee on Crime, Terrorism and Homeland Security of the Senate Judiciary Committee on July 11, 2012.

PART B - QUALIFICATIONS

14. QUALIFICATIONS (DESCRIBE WHY YOU BELIEVE YOU ARE QUALIFIED TO SERVE AS UNDER SECRETARY FOR INTELLIGENCE AND ANALYSIS).

My qualifications for this position are largely based on my government experience with national security and intelligence matters described above in response to Question 10. That experience has been supplemented during my years in the private sector by my involvement in various national security-related boards and organizations (see

responses to Questions 9, 10 and 12) as well as my numerous representations as a private lawyer that have involved individuals and issues relating to national security and the Intelligence Community.

In addition, it is worth mentioning three other areas of experience that will be important to my effectiveness if confirmed to this position. The first is my management experience. As a government official, I was honored to lead and manage groups ranging from my trial teams as an Assistant U.S. Attorney, to the U.S. Attorney's Office in Washington, D.C., the Executive Office for U.S. Attorneys, the FBI General Counsel's Office, the National Security Division and the staff of the Homeland Security Council. I also gained valuable and directly relevant management experience when I helped Director Robert S. Mueller with the transformation of the FBI into a more effective intelligence agency in the years after 9/11 and when I managed the inter-agency policy-making process as Homeland Security Advisor for President Bush. This management experience will be critically important if I have the honor of leading the Office of Intelligence and Analysis and helping its staff position themselves to meet the intelligence threats and needs of today and tomorrow.

A second area of relevant experience is my long experience with state and local law enforcement. As a line and supervisory prosecutor for a dozen years, I worked hard to foster the working relationship between police and prosecutor that is essential to effective law enforcement. I continued that effort as a senior Justice Department official – and particularly as the U.S. Attorney in DC who, unlike other U.S. Attorneys, is responsible for prosecution of almost all adult crimes in the district and works very closely with the local police (the Metropolitan Police Department). Thanks to that effort – and the reciprocal effort of true professionals like D.C. Police Chief Charles Ramsey and others – I had strong working relationships with state and local law enforcement at every step of my government career. That experience with – and appreciation for -- our state and local partners will prove to be an important asset, given the important role that the Office of Intelligence and Analysis plays in the integration of the federal and state and local intelligence efforts.

The last area of experience to highlight is my background as a federal prosecutor, in which position it was my job to advance public safety and pursue prosecutions, but also to protect the rights and liberties of the criminal defendants in those prosecutions and of any others whose privacy and rights were affected by our investigations and cases. The experience of having that dual obligation during the formative stage of my career resulted in my maintaining an intense focus on civil liberties concerns at every turn throughout my subsequent government career, with a prime example being our establishment of the Oversight Section and program within the National Security Division, which represented the first time that Main Justice attorneys were granted and exercised comprehensive oversight authority over the FBI's national security investigations. I will maintain that focus and deep respect for civil liberties concerns if I am selected to this position in the domestic intelligence process, where constitutional rights can be easily implicated and must be scrupulously observed.

PART C - POLITICAL AND FOREIGN AFFILIATIONS

15. POLITICAL ACTIVITIES (LIST ANY MEMBERSHIPS OR OFFICES HELD IN OR FINANCIAL CONTRIBUTIONS OR SERVICES RENDERED TO, ANY POLITICAL PARTY, ELECTION COMMITTEE, POLITICAL ACTION COMMITTEE, OR INDIVIDUAL CANDIDATE DURING THE LAST TEN YEARS).

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>
Biden for President	\$2,800.00	2020
Biden for President	\$2,800.00	2020
DNC Services Corp / Democratic National Committee	\$5,600.00	2020
Joe Sestak for President	\$250.00	2019
Ben Sasse for US Senate Inc.	\$500.00	2018
Dettelbach for Ohio	\$250.00	2018
Dettelbach for Ohio	\$200.00	2017
Steve Dettelbach for Ohio Attorney General	\$500.00	2017
Ben Sasse for US Senate Inc.	\$500.00	2017
Ed Gillespie Campaign Committee	\$1,000.00	2017

Right to Rise USA	\$1,000.00	2015
JEB 2016, Inc.	\$2,700.00	2015
Glenn Ivey for Congress	\$300.00	2015
Ben Sasse for U.S. Senate	\$200.00	2014
Ed Gillespie for Senate	\$1,000.00	2014
Juliette Kayyem for Massachusetts	\$500.00	2014
Friends of Doug Gansler	\$250.00	2014
Friends of Doug Gansler	\$1,000.00	2013
Mike Sullivan for US Senate Committee	\$1,000.00	2013
Whitaker for US Senate Inc.	\$300.00	2013
Friends of Susan Brooks	\$250.00	2012

In addition to the above political contributions, I was a co-founder of the Former Republican National Security Officials for Biden, which was affiliated with 501(c)(4) organization, Defending Democracy Together, and issued statements during the 2020 presidential campaign.

16. CANDIDACY FOR PUBLIC OFFICE (FURNISH DETAILS OF ANY CANDIDACY FOR ELECTIVE PUBLIC OFFICE).

N/A

17. FOREIGN AFFILIATIONS

(NOTE: QUESTIONS 17A AND B ARE NOT LIMITED TO RELATIONSHIPS REQUIRING REGISTRATION UNDER THE FOREIGN AGENTS REGISTRATION ACT. QUESTIONS 17A, B, AND C DO NOT CALL FOR A POSITIVE RESPONSE IF THE REPRESENTATION OR TRANSACTION WAS AUTHORIZED BY THE UNITED STATES GOVERNMENT IN CONNECTION WITH YOUR OR YOUR SPOUSE'S EMPLOYMENT IN GOVERNMENT SERVICE.)

A. HAVE YOU OR YOUR SPOUSE EVER REPRESENTED IN ANY CAPACITY (E.G. EMPLOYEE, ATTORNEY, OR POLITICAL/BUSINESS CONSULTANT), WITH OR WITHOUT COMPENSATION, A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE FULLY DESCRIBE SUCH RELATIONSHIP.

Davis Polk is an international firm with offices around the world and which has represented companies that are state-owned enterprises. Having reviewed my records, it appears that I did work on one occasion for one state-owned enterprise, the Chinese National Offshore Oil Corporation, which is a client of the China office of our firm. At the request of another partner, I supervised an associate drafting a memo summarizing U.S. law. In total, I billed less than 3 hours of work, which was the full extent of my engagement and contacts on the matter.

B. HAVE ANY OF YOUR OR YOUR SPOUSE'S ASSOCIATES REPRESENTED, IN ANY CAPACITY, WITH OR WITHOUT COMPENSATION, A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE FULLY DESCRIBE SUCH RELATIONSHIP.

As stated above, I have worked in international law firms that represent companies, sovereign wealth funds and other entities that are state-owned enterprises, and as such I have had colleagues (i.e. "associates") in those firms who have done work for those entities.

C. DURING THE PAST TEN YEARS, HAVE YOU OR YOUR SPOUSE RECEIVED ANY COMPENSATION FROM, OR BEEN INVOLVED IN ANY FINANCIAL OR BUSINESS TRANSACTIONS WITH, A FOREIGN GOVERNMENT OR ANY ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE PROVIDE DETAILS.

No.

D. HAVE YOU OR YOUR SPOUSE EVER REGISTERED UNDER THE FOREIGN AGENTS REGISTRATION ACT? IF SO, PLEASE PROVIDE DETAILS.

No.

18. DESCRIBE ANY LOBBYING ACTIVITY DURING THE PAST TEN YEARS, OTHER THAN IN AN OFFICIAL U.S. GOVERNMENT CAPACITY, IN WHICH YOU OR YOUR SPOUSE HAVE ENGAGED FOR THE PURPOSE OF DIRECTLY OR INDIRECTLY INFLUENCING THE PASSAGE, DEFEAT, OR MODIFICATION OF FEDERAL LEGISLATION, OR FOR THE PURPOSE OF AFFECTING THE ADMINISTRATION AND EXECUTION OF FEDERAL LAW OR PUBLIC POLICY.

N/A

PART D - FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST

19. DESCRIBE ANY EMPLOYMENT, BUSINESS RELATIONSHIP, FINANCIAL TRANSACTION, INVESTMENT, ASSOCIATION, OR ACTIVITY (INCLUDING, BUT NOT LIMITED TO, DEALINGS WITH THE FEDERAL GOVERNMENT ON YOUR OWN BEHALF OR ON BEHALF OF A CLIENT), WHICH COULD CREATE, OR APPEAR TO CREATE, A CONFLICT OF INTEREST IN THE POSITION TO WHICH YOU HAVE BEEN NOMINATED.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Homeland Security's Designated Agency Ethics Official to identify any potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I will sign and transmit to the Department's Designated Agency Ethics Official, which will be provided to this Committee. I am not aware of any other potential conflicts of interest.

As laid out in Question 35, I have represented a number of clients – individuals, companies and other organizations – before the federal government in legal matters of various types. To the extent that those representations are not already over, my involvement in them will cease when and if I leave my law firm for this position, and none of them is of a nature that would create any appearance of a continuing conflict of interest. Pursuant to my Ethics Agreement, I will consult with DHS Ethics officials with respect to participating in any matters involving any of my former clients.

20. DO YOU INTEND TO SEVER ALL BUSINESS CONNECTIONS WITH YOUR PRESENT EMPLOYERS, FIRMS, BUSINESS ASSOCIATES AND/OR PARTNERSHIPS, OR OTHER ORGANIZATIONS IN THE EVENT THAT YOU ARE CONFIRMED BY THE SENATE? IF NOT, PLEASE EXPLAIN.

Yes, I will do so consistent with the terms of my ethics agreement with the DHS Designated Agency Ethics official.

21. DESCRIBE THE FINANCIAL ARRANGEMENTS YOU HAVE MADE OR PLAN TO MAKE, IF YOU ARE CONFIRMED, IN CONNECTION WITH SEVERANCE FROM YOUR CURRENT POSITION. PLEASE INCLUDE SEVERANCE PAY, PENSION RIGHTS, STOCK OPTIONS, DEFERRED INCOME ARRANGEMENTS, AND ANY AND ALL COMPENSATION THAT WILL OR MIGHT BE RECEIVED IN THE FUTURE AS A RESULT OF YOUR CURRENT BUSINESS OR PROFESSIONAL RELATIONSHIPS.

The terms of my separation from my law firm and related payments are set out in Part 3 of my OGE Form 278 and in my ethics agreement.

22. DO YOU HAVE ANY PLANS, COMMITMENTS, OR AGREEMENTS TO PURSUE OUTSIDE EMPLOYMENT, WITH OR WITHOUT COMPENSATION, DURING YOUR SERVICE WITH THE GOVERNMENT? IF SO, PLEASE PROVIDE DETAILS.

No.

23. AS FAR AS CAN BE FORESEEN, STATE YOUR PLANS AFTER COMPLETING GOVERNMENT SERVICE. PLEASE SPECIFICALLY DESCRIBE ANY AGREEMENTS OR UNDERSTANDINGS, WRITTEN OR UNWRITTEN, CONCERNING EMPLOYMENT AFTER LEAVING GOVERNMENT SERVICE. IN PARTICULAR, DESCRIBE ANY AGREEMENTS, UNDERSTANDINGS, OR OPTIONS TO RETURN TO YOUR CURRENT POSITION.

I have no plans for employment after I leave government in the event that I am confirmed for this position. Nor do I have any understandings, either explicit or implicit, with any employers about potential employment at that stage of my career.

24. IF YOU ARE PRESENTLY IN GOVERNMENT SERVICE, DURING THE PAST FIVE YEARS OF SUCH SERVICE, HAVE YOU RECEIVED FROM A PERSON OUTSIDE OF GOVERNMENT AN OFFER OR EXPRESSION OF INTEREST TO EMPLOY YOUR SERVICES AFTER YOU LEAVE GOVERNMENT SERVICE? IF YES, PLEASE PROVIDE DETAILS.

N/A

25. IS YOUR SPOUSE EMPLOYED? IF YES AND THE NATURE OF THIS EMPLOYMENT IS RELATED IN ANY WAY TO THE POSITION FOR WHICH YOU ARE SEEKING CONFIRMATION, PLEASE INDICATE YOUR SPOUSE'S EMPLOYER, THE POSITION, AND THE LENGTH OF TIME THE POSITION HAS BEEN HELD. IF YOUR SPOUSE'S EMPLOYMENT IS NOT RELATED TO THE POSITION TO WHICH YOU HAVE BEEN NOMINATED, PLEASE SO STATE.

My wife is employed, but her employment has no relation at all to the position for which I have been nominated.

26. LIST BELOW ALL CORPORATIONS, PARTNERSHIPS, FOUNDATIONS, TRUSTS, OR OTHER ENTITIES TOWARD WHICH YOU OR YOUR SPOUSE HAVE FIDUCIARY OBLIGATIONS OR IN WHICH YOU OR YOUR SPOUSE HAVE HELD DIRECTORSHIPS OR OTHER POSITIONS OF TRUST DURING THE PAST FIVE YEARS.

<u>NAME OF ENTITY</u>	<u>POSITION</u>	<u>DATES HELD</u>	<u>SELF OR SPOUSE</u>
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REDACTED

27. LIST ALL GIFTS EXCEEDING \$100 IN VALUE RECEIVED DURING THE PAST FIVE YEARS BY YOU, YOUR SPOUSE, OR YOUR DEPENDENTS. (NOTE: GIFTS RECEIVED FROM RELATIVES AND GIFTS GIVEN TO YOUR SPOUSE OR DEPENDENT NEED NOT BE INCLUDED UNLESS THE GIFT WAS GIVEN WITH YOUR KNOWLEDGE AND ACQUIESCENCE AND YOU HAD REASON TO BELIEVE THE GIFT WAS GIVEN BECAUSE OF YOUR OFFICIAL POSITION.)

While I do not know their specific values, I have received things of value from friends and colleagues over the past five years. I have had many meals with friends and colleagues at which my friend or colleague picked up the tab (as well as many at which I picked up the tab). I have received gifts of wine from two of my law firm partners, and have exchanged holiday and birthday gifts with many friends, though these were likely under the \$100 threshold.

28. LIST ALL SECURITIES, REAL PROPERTY, PARTNERSHIP INTERESTS, OR OTHER INVESTMENTS OR RECEIVABLES WITH A CURRENT MARKET VALUE (OR, IF MARKET VALUE IS NOT ASCERTAINABLE, ESTIMATED CURRENT FAIR VALUE) IN EXCESS OF \$1,000. (NOTE: THE

INFORMATION PROVIDED IN RESPONSE TO SCHEDULE A OF THE DISCLOSURE FORMS OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CURRENT VALUATIONS ARE USED.)

<u>DESCRIPTION OF PROPERTY</u>	<u>VALUE</u>	<u>METHOD OF VALUATION</u>
House in Montrose, Alabama	\$932,731	Baldwin County Real Estate Assessment
Family home in Alexandria, Virginia	\$2,256,717	Alexandria Real Estate Assessment

All other relevant property is listed on the OGE Form 278.

29. LIST ALL LOANS OR OTHER INDEBTEDNESS (INCLUDING ANY CONTINGENT LIABILITIES) IN EXCESS OF \$10,000. EXCLUDE A MORTGAGE ON YOUR PERSONAL RESIDENCE UNLESS IT IS RENTED OUT, AND LOANS SECURED BY AUTOMOBILES, HOUSEHOLD FURNITURE, OR APPLIANCES. (NOTE: THE INFORMATION PROVIDED IN RESPONSE TO SCHEDULE C OF THE DISCLOSURE FORM OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CONTINGENT LIABILITIES ARE ALSO INCLUDED.)

<u>NATURE OF OBLIGATION</u>	<u>NAME OF OBLIGEE</u>	<u>AMOUNT</u>
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N/A

30. ARE YOU OR YOUR SPOUSE NOW IN DEFAULT ON ANY LOAN, DEBT, OR OTHER FINANCIAL OBLIGATION? HAVE YOU OR YOUR SPOUSE BEEN IN DEFAULT ON ANY LOAN, DEBT, OR OTHER FINANCIAL OBLIGATION IN THE PAST TEN YEARS? HAVE YOU OR YOUR SPOUSE EVER BEEN REFUSED CREDIT OR HAD A LOAN APPLICATION DENIED? IF THE ANSWER TO ANY OF THESE QUESTIONS IS YES, PLEASE PROVIDE DETAILS.

No.

31. LIST THE SPECIFIC SOURCES AND AMOUNTS OF ALL INCOME RECEIVED DURING THE LAST FIVE YEARS, INCLUDING ALL SALARIES, FEES, DIVIDENDS, INTEREST, GIFTS, RENTS, ROYALTIES, PATENTS, HONORARIA, AND OTHER ITEMS EXCEEDING \$200. (COPIES OF U.S. INCOME TAX RETURNS FOR THESE YEARS MAY BE SUBSTITUTED HERE, BUT THEIR SUBMISSION IS NOT REQUIRED.)

REDACTED

32. IF ASKED, WILL YOU PROVIDE THE COMMITTEE WITH COPIES OF YOUR AND YOUR SPOUSE'S FEDERAL INCOME TAX RETURNS FOR THE PAST THREE YEARS?

Yes.

33. LIST ALL JURISDICTIONS IN WHICH YOU AND YOUR SPOUSE FILE ANNUAL INCOME TAX RETURNS.

For the 2020 tax year, my spouse and I filed income tax returns in the following states:

1. Alabama,
2. California,
3. Illinois,
4. New York, and
5. Virginia.

In addition, my law firm included me in the following 2020 composite state tax returns:

1. Connecticut,
2. Massachusetts,
3. Minnesota,
4. New Jersey, and
5. Ohio.

34. HAVE YOUR FEDERAL OR STATE TAX RETURNS BEEN THE SUBJECT OF AN AUDIT, INVESTIGATION, OR INQUIRY AT ANY TIME? IF SO, PLEASE PROVIDE DETAILS, INCLUDING THE RESULT OF ANY SUCH PROCEEDING.

No.

35. IF YOU ARE AN ATTORNEY, ACCOUNTANT, OR OTHER PROFESSIONAL, PLEASE LIST ALL CLIENTS AND CUSTOMERS WHOM YOU BILLED MORE THAN \$200 WORTH OF SERVICES DURING THE PAST FIVE YEARS. ALSO, LIST ALL JURISDICTIONS IN WHICH YOU ARE LICENSED TO PRACTICE.

I have an active bar license in the District of Columbia and an inactive bar license in California. My clients over the past five years have been the following:

Affonso, Luis
Agustoni, Emanuel
Ad Hoc Group of McDermott Term Lenders
Ankura Consulting Group LLC
Archdiocese of Washington
Astrazeneca Pharmaceuticals LP
Atairos Management, L.P.
Baier, Marc
Baron Capital, Inc.
Brennan, John O.
Brookfield Real Estate Financial Partner
Caliburn International
Charoen Pokphand Group Company Limited
Chevron Corporation
Citizens Financial Group Inc.
Clapper Jr., James R.
CNOOC Limited [See answer to Question 17 above]
Cohen, David S.

Comcast Corporation
Dowdall, John
Energycap, Inc.
Equinix, Inc.
Facebook, Inc.
Federal Deposit Insurance Corporation
Fidelity National Financial
Fomento De Construcciones Y Contratas
Ford Motor Company
Fulcrum IT Services
General Dynamics Corporation
Gustin, David
Hay, Mary
Henderson, Chris
Holmes, David A.
HSBC Holdings Plc
IronNet Cybersecurity
J.P. Morgan Chase Bank, N.A.
Joyner, Christopher
Kapoor, Rakesh
Knight, Ellen
Larose, Scott
Learfield/IMG College
Linklaters LLP
Mansbach, Ross
Mayopoulos, Tim
McGuire, Jason
Mislock, Steven
Morell, Michael
Morgan Stanley & Co. LLC
MyLife
Natura Cosmeticos S.A.
NBCUniversal Media LLC
Nefkens, Mike
Oberman, Allan
Oden, Anthony
Olsen, Matthew
Omise Holdings Pte. Ltd.
Palma, Emanuele
Picchietti, Phil
Purdue Pharma
RBS Securities Inc.
Renaissance Technologies
Reuss, Mark
Sedaghat, Shawn
Shipcom Wireless, Inc.
Silver Spike Capital
SLM Corporation
SF Motors
State Of New York
Taieb, Eli
The Catholic University of America
Tyab, Naem
Undavya, Khayati
United Cellular, Inc.
Walmart Inc.

Weiss, Alex
Whitfield, Cong. Ed
Wynn Resorts Limited
Wyss, Andre
Zocdoc

I have also represented four clients during the past five years in non-public matters whose identities I am not disclosing because of bar ethical rules.

36. DO YOU INTEND TO PLACE YOUR FINANCIAL HOLDINGS AND THOSE OF YOUR SPOUSE AND DEPENDENT MEMBERS OF YOUR IMMEDIATE HOUSEHOLD IN A BLIND TRUST? IF YES, PLEASE FURNISH DETAILS. IF NO, DESCRIBE OTHER ARRANGEMENTS FOR AVOIDING ANY POTENTIAL CONFLICTS OF INTEREST.

I do not intend to put our financial holdings in a blind trust. Instead, I have entered into an Ethics Agreement to address any current conflict of interest concerns arising from my financial holdings, and I will follow the advice of the government ethics officials to avoid any conflicts of interest in the future.

37. IF APPLICABLE, LIST THE LAST THREE YEARS OF ANNUAL FINANCIAL DISCLOSURE REPORTS YOU HAVE BEEN REQUIRED TO FILE WITH YOUR AGENCY, DEPARTMENT, OR BRANCH OF GOVERNMENT. IF ASKED, WILL YOU PROVIDE A COPY OF THESE REPORTS?

My last three financial disclosure reports were the last three full years of my government service (2005-08). I'd be happy to provide them, assuming they are on file at the Justice Department.

PART E - ETHICAL MATTERS

38. HAVE YOU EVER BEEN THE SUBJECT OF A DISCIPLINARY PROCEEDING OR CITED FOR A BREACH OF ETHICS OR UNPROFESSIONAL CONDUCT BY, OR BEEN THE SUBJECT OF A COMPLAINT TO, ANY COURT, ADMINISTRATIVE AGENCY, PROFESSIONAL ASSOCIATION, DISCIPLINARY COMMITTEE, OR OTHER PROFESSIONAL GROUP? IF SO, PLEASE PROVIDE DETAILS.

No.

39. HAVE YOU EVER BEEN INVESTIGATED, HELD, ARRESTED, OR CHARGED BY ANY FEDERAL, STATE, OR OTHER LAW ENFORCEMENT AUTHORITY FOR VIOLATION OF ANY FEDERAL, STATE, COUNTY, OR MUNICIPAL LAW, REGULATION, OR ORDINANCE, OTHER THAN A MINOR TRAFFIC OFFENSE, OR NAMED AS A DEFENDANT OR OTHERWISE IN ANY INDICTMENT OR INFORMATION RELATING TO SUCH VIOLATION? IF SO, PLEASE PROVIDE DETAILS.

No.

40. HAVE YOU EVER BEEN CONVICTED OF OR ENTERED A PLEA OF GUILTY OR NOLO CONTENDERE TO ANY CRIMINAL VIOLATION OTHER THAN A MINOR TRAFFIC OFFENSE? IF SO, PLEASE PROVIDE DETAILS.

No.

41. ARE YOU PRESENTLY OR HAVE YOU EVER BEEN A PARTY IN INTEREST IN ANY ADMINISTRATIVE AGENCY PROCEEDING OR CIVIL LITIGATION? IF SO, PLEASE PROVIDE DETAILS.

Yes. In 2016, my wife and I secured a judgment in the General District Court of Alexandria, Virginia against a former tenant in a rental property we owned for her failure to pay approximately \$19,000 in rent. Although we

secured the judgment, we were unable to collect from the former tenant. The case was *Elizabeth and Ken Wainstein v. Nancy Piper*, Case No. GV16001119-00.

42. HAVE YOU BEEN INTERVIEWED OR ASKED TO SUPPLY ANY INFORMATION AS A WITNESS OR OTHERWISE IN CONNECTION WITH ANY CONGRESSIONAL INVESTIGATION, FEDERAL, OR STATE AGENCY PROCEEDING, GRAND JURY INVESTIGATION, OR CRIMINAL OR CIVIL LITIGATION IN THE PAST TEN YEARS? IF SO, PLEASE PROVIDE DETAILS.

No.

43. HAS ANY BUSINESS OF WHICH YOU ARE OR WERE AN OFFICER, DIRECTOR, OR PARTNER BEEN A PARTY TO ANY ADMINISTRATIVE AGENCY PROCEEDING OR CRIMINAL OR CIVIL LITIGATION RELEVANT TO THE POSITION TO WHICH YOU HAVE BEEN NOMINATED? IF SO, PLEASE PROVIDE DETAILS. (WITH RESPECT TO A BUSINESS OF WHICH YOU ARE OR WERE AN OFFICER, YOU NEED ONLY CONSIDER PROCEEDINGS AND LITIGATION THAT OCCURRED WHILE YOU WERE AN OFFICER OF THAT BUSINESS.)

No.

44. HAVE YOU EVER BEEN THE SUBJECT OF ANY INSPECTOR GENERAL INVESTIGATION? IF SO, PLEASE PROVIDE DETAILS.

No.

PART F - SECURITY INFORMATION

45. HAVE YOU EVER BEEN DENIED ANY SECURITY CLEARANCE OR ACCESS TO CLASSIFIED INFORMATION FOR ANY REASON? IF YES, PLEASE EXPLAIN IN DETAIL.

No.

46. HAVE YOU BEEN REQUIRED TO TAKE A POLYGRAPH EXAMINATION FOR ANY SECURITY CLEARANCE OR ACCESS TO CLASSIFIED INFORMATION? IF YES, PLEASE EXPLAIN.

Yes, I believe I took polygraphs for my employment at the FBI and also possibly in connection with my clearance for membership on one or more of the Intelligence Community advisory boards (NCTC, CIA or NSA).

47. HAVE YOU EVER REFUSED TO SUBMIT TO A POLYGRAPH EXAMINATION? IF YES, PLEASE EXPLAIN.

No.

PART G - ADDITIONAL INFORMATION

48. DESCRIBE IN YOUR OWN WORDS THE CONCEPT OF CONGRESSIONAL OVERSIGHT OF U.S. INTELLIGENCE ACTIVITIES. IN PARTICULAR, CHARACTERIZE WHAT YOU BELIEVE TO BE THE OBLIGATIONS OF THE UNDER SECRETARY FOR INTELLIGENCE AND ANALYSIS AND THE INTELLIGENCE COMMITTEES OF THE CONGRESS, RESPECTIVELY, IN THE OVERSIGHT PROCESS.

As I learned in my government service – and as I have taught my students in my national security law school seminar – Congress plays a critical role in overseeing the operations of the Intelligence Community. It is absolutely vital that the executive branch keep Congress “fully and currently informed” of its intelligence activities, so that Congress can provide the Intelligence Community with valuable guidance and carry out its critical oversight responsibilities. It is also vital that Intelligence Community officials fully cooperate with congressional

investigations in a timely manner, and that they support and protect the rights of whistleblowers to raise their concerns without fear of retaliation.

In terms of respective obligations, it is the responsibility of the Intelligence Committees to demand the relevant information and ask the right answers to perform effective oversight. It is, in turn, the obligation of the executive branch leaders in the Intelligence Community to provide that information, to answer those questions and to encourage those under their charge to be similarly cooperative with Congressional oversight. During my government service, I was always proud to uphold that obligation in my extensive dealings with the relevant Congressional oversight committees. I testified 10-20 times before Congress, and I routinely provided briefings to interested Members about the national security issues that were front and center during that time. I can assure the Committee that I will continue that cooperative approach to Congressional oversight if I am confirmed as Under Secretary for Intelligence and Analysis.

49. EXPLAIN YOUR UNDERSTANDING OF THE RESPONSIBILITIES OF THE UNDER SECRETARY FOR INTELLIGENCE AND ANALYSIS.

The primary responsibility of the Under Secretary is to do everything in his or her authority to advance the mission of the Office of Intelligence and Analysis (I&A). I&A plays a number of vital roles in the nation's intelligence operation. It is the intelligence arm of the Department of Homeland Security, providing intelligence that meets a national or departmental mission to the Department leadership and to policy makers across the federal government. It provides intelligence and intelligence support to the other components of DHS in furtherance of their homeland security missions. It also partners with state, local, tribal and territorial authorities and critical infrastructure, ensuring that those partners receive the intelligence relevant to threats within their jurisdictions and that the intelligence they generate gets appropriately disseminated to the rest of the Intelligence Community.

It is the Under Secretary's job to put I&A and its staff in the position to successfully accomplish that multidimensional mission. First, the Under Secretary must focus internally and support the efforts of the dedicated men and women in I&A, providing the direction and resources they need to maximize their effectiveness. Second, the Under Secretary must also focus externally and work with a variety of constituencies that are critical to the success of the I&A and its mission. That effort entails fostering the key relationships with state, local, tribal and territorial authorities and relevant private sector actors and working to integrate those entities into the broader Intelligence Community; working with leadership of the Intelligence Community to further integrate I&A into its operations; coordinating with other DHS components to ensure that I&A is maximizing its potential as a source of intelligence support to those components and their missions; and engaging regularly with Congress to ensure that I&A is meeting the objectives of the congressional vision behind its creation in the Homeland Security Act and to allow for the meaningful oversight that is critical to maintaining the trust and confidence of Congress and the American people.

The Under Secretary must also remain attuned to the implications that the work of I&A can have on privacy and constitutional rights. He or she must always remember – and must regularly convey to the I&A staff – that the Office has a dual mission of protecting both national security and civil liberties and that the Office is successful only when both missions are accomplished.

Finally, as is the case for any leader in the Intelligence Community, it is the obligation of the Under Secretary to take all steps necessary to shield I&A's intelligence operations from any sort of political influence and to ensure that I&A's intelligence reports are products of the highest analytical quality and objectivity. Like the other IC agencies, the I&A is a staff of true professionals who are dedicated to the apolitical mission of protecting our nation. It will be incumbent on the Under Secretary to emphasize and reinforce – through action and message -- the apolitical nature of that mission at every turn and to prioritize non-partisan professionalism in all aspects of the Office's operations.

AFFIRMATION

I, **KENNETH LEONARD WAINSTEIN**, DO SWEAR THAT THE ANSWERS I HAVE PROVIDED TO THIS QUESTIONNAIRE ARE ACCURATE AND COMPLETE.

December 3, 2021
(Date)

KENNETH WAINSTEIN SIGNATURE

NOTARY SIGNATURE



TO THE CHAIRMAN, SELECT COMMITTEE ON INTELLIGENCE:

In connection with my nomination to be the Under Secretary of Homeland Security for Intelligence and Analysis, I hereby express my willingness to respond to requests to appear and testify before any duly constituted committee of the Senate.

KENNETH WAINSTEIN SIGNATURE

Date: December 3, 2021

SELECT COMMITTEE ON
INTELLIGENCE

UNITED STATES SENATE



**Additional Prehearing Questions
for Kenneth Wainstein
upon his nomination to be the
Under Secretary for Intelligence and Analysis,
Department of Homeland Security**

Role and Responsibilities of the Under Secretary for Intelligence and Analysis

QUESTION 1. The Department of Homeland Security's (DHS) Office of Intelligence & Analysis (I&A) mission was established by the Homeland Security Act of 2002, which mandated I&A's responsibility for critical infrastructure analysis, terrorism, and the other missions of DHS more broadly. What is your understanding of the history and purpose, as established by Congress, of the office of the Under Secretary for I&A in DHS?

As Homeland Security Advisor in 2008-09, I saw – and admired – the strong efforts by the leadership and intelligence personnel of DHS to establish and solidify both an intelligence network among our state, local, tribal, territorial, and private sector partners and an integrated intelligence function within the new department. Since that time, I&A has grown into its congressionally mandated role with a robust analytical capability and support to fusion centers in every state. This ability to share information broadly across all partners, including the private sector, protects our critical infrastructure and our national security and is unique among the U.S. Intelligence Community. Over time, Congress enacted revisions to the Homeland Security Act to address evolving requirements such as establishing the role and authorities of the Chief Intelligence Officer and of the DHS intelligence functions within each of its components, known collectively as the DHS Intelligence Enterprise (IE). If confirmed I look forward to working with Congress to explore other potential improvements to I&A and the DHS IE.

The *Homeland Security Act of 2002* first established the Office of Information Analysis, the predecessor to I&A within the DHS's Directorate for Information Analysis and Infrastructure Protection, to improve the coordination, sharing, and analysis of information and intelligence; to ensure inclusion of DHS needs in the U.S. Intelligence Community's determination of the nation's intelligence collection priorities; to exploit the intelligence-related information already being collected by DHS through its operational components; and to facilitate greater access to and cross-mission coordination of information collected by federal, state, and local intelligence, law enforcement, and other agencies.

In subsequent years, Congress amended the Homeland Security Act to provide I&A greater intelligence access, including to raw information, and analytic capabilities to meet a broader range of threats to the United States; to provide intelligence analysis to the Department, to state and local government, and to law enforcement; and for the purpose of preventing terrorist attacks, enhancing border security, protecting critical infrastructure, enhancing emergency preparedness and response, and better informing DHS's research and development activities.

The *Implementing Recommendations of the 9/11 Commission Act* of 2007 also included key changes to I&A's mission aimed at improving information sharing among federal,

state, local, and tribal authorities. In the 9/11 Act, Congress sought to improve the organization and mission structure for DHS-wide intelligence by codifying the role of the Under Secretary for Intelligence and Analysis as the Chief Intelligence Officer for DHS. Congress granted the Under Secretary for Intelligence and Analysis new responsibilities and expanded authorities to drive a common intelligence mission across DHS. Pursuant to authorities provided in this Act, the Under Secretary exercises leadership and authority over the formulation and implementation of intelligence policy and programs throughout DHS, and provides strategic oversight and support to the intelligence-related missions and goals of DHS.

QUESTION 2. In addition to statutes, I&A's strategy was further refined by DHS and Intelligence Community (IC) strategies and guidance, including Vision 2025, the Quadrennial Homeland Security Review, and DHS's Bottom-Up Review. What do you understand I&A's current mission to be?

I&A's mission statement is "to equip the Homeland Security Enterprise with the intelligence and information it needs to keep the homeland safe, secure, and resilient," which effectively captures the critical role that I&A is designed to play in providing quality and timely intelligence to DHS leadership and federal, state, local, tribal, territorial, and private sector partners to keep Americans and their communities safe.

QUESTION 3. In your opinion, does I&A have a focused and well-defined mission consistent with the purpose Congress originally intended?

As I understand it, I&A's mission statement seems to be aligned with Congress' intent as expressed in the Homeland Security Act. If confirmed, I will carefully examine I&A's programs and initiatives, and I will make every effort to ensure that they most effectively serve the needs of I&A's critical partners and are fully consistent with Congress's vision for the organization.

QUESTION 4. What should I&A's mission be in the present and into the future?

I believe I&A's current mission statement appropriately represents the agency's purpose as intended by Congress, and as delineated by the authorities provided in statute. If confirmed, I will focus my efforts on ensuring that I&A is able to effectively perform its mission and execute its unique statutory requirement of delivering intelligence (anticipatory, strategic and operational) to state, local, tribal and territorial and private sector partners and developing intelligence from those partners for DHS and the Intelligence Community.

QUESTION 5. Please describe the relative prioritization of I&A's national intelligence mission and its mission to support DHS? How should resource allocations, administrative structures and long-term planning reflect that prioritization?

While my perspective is currently that of a private citizen, if confirmed I plan to ensure that any long-term planning and resource allocations sufficiently invest the necessary resources to enable I&A to confront an increasingly complex and dynamic threat landscape. To accomplish that mission, I&A must have the resources and capability to support both its Intelligence Community and state, local, tribal, territorial, and private sector partners as well as the components within DHS. With that said, these two functions really complement each other, and I&A's proficiency in one supports its proficiency in the other. For example, the quality of I&A's intelligence analysis in support of DHS should ideally be enriched by I&A's understanding of the intelligence needs of state, local, tribal, territorial, and private sector critical infrastructure customers.

QUESTION 6. I&A has been criticized in the past for producing intelligence products that are duplicative of finished intelligence from other IC entities.

- A.** How should I&A's role be distinct from the analytic role played by other members of the IC, such as the Federal Bureau of Investigation (FBI) or the National Counterterrorism Center (NCTC)?

I&A is statutorily required to work domestically across government at all levels and with the private sector, as a statutorily designated element of the Intelligence Community, to conduct intelligence activities supporting both national and departmental missions. I&A has the unique ability to integrate intelligence into operations across DHS components, its partners in state and local government and the private sector to identify, mitigate and respond to threats. This mission is unlike that of the FBI, which is charged with the domestic law enforcement mission for terrorism and counterintelligence, and NCTC, which is more focused on foreign-based or inspired terrorism issues.

- B.** What does I&A add that is missing from other IC production?

I&A can produce strategic intelligence products that leverage Intelligence Community holdings as well as intelligence and information from across DHS. I&A's production is tailored to threats that impact homeland security and it is designed for distribution to a broad customer base that requires production of intelligence at all levels of classification. If confirmed, I will work to ensure that I&A is a value add to the Intelligence Community's production and not a duplication of effort.

- C.** How will you measure and define the success of I&A analytic production? Is I&A currently meeting those standards?

While my perspective is currently that of a private citizen, if confirmed one of my first tasks will be to assess whether I&A's analytic production is sufficiently positioned to meet

the most significant needs of I&A's partners and customers. I will do that by assessing whether I&A's analytic production aligns with its analytic goals, the IC's priorities and standards of analytical tradecraft.

D. Which is more important: the quantity or the quality/impact of the reporting? Why?

The quantity and quality of the reporting are both important variables when setting key performance indicators and measuring an organization's success against them. However, in the final analysis, quality should be the primary concern, as a large quantity of irrelevant or substandard intelligence reporting may undermine the effectiveness and credibility of the intelligence enterprise. If confirmed, I would focus on ensuring I&A's reporting both meets the highest standards and is generated with sufficient frequency and volume to meet the needs of its customers.

QUESTION 7. Does I&A's work reduce the risk of a terrorist attack? If so, please explain how.

I&A was established following 9/11 to provide state, local, tribal, and territorial governments and private sector partners the information needed to anticipate future threats and vulnerabilities within their localities, a critical governmental function that was underdeveloped and understaffed when I was working in the counterterrorism area in the early 2000s. While I have not been privy to the metrics that I&A uses to measure its impact on terrorism risk, it is my belief that I&A has played an important role in the effort to provide valuable operational information to those partners. If confirmed I would look forward to working with DHS leadership, as well as this Committee and others in Congress, to identify the appropriate metrics by which to evaluate I&A's success.

QUESTION 8. What unique role should I&A be performing, if any, with regard to countering violent extremism in the United States?

I&A has a role of providing timely and actionable intelligence and information to policymakers and state and local partners at the lowest classification level possible. This includes producing intelligence products that provide situational awareness into evolving threats, and which I&A's partners and fellow DHS components can use to inform public safety and security planning efforts to prevent terrorism and targeted violence. My understanding is that I&A has enhanced its ability to analyze, produce, and disseminate products that address violent extremism threats, including domestic violent extremist narratives shared via social media and other online platforms. If confirmed, I will ensure that these efforts continue, and that I&A's role in this space is undertaken in tandem with the Department's overall efforts to address this threat.

QUESTION 9. Please describe areas in which you believe I&A's authorities are insufficient, unclear or exceed what is necessary or proper for I&A's mission.

From my current vantage point outside of government, I&A's authorities appear appropriate for its mission. However, having overseen the establishment of the National Security Division in 2006 (the first new Department of Justice division in about 50 years), I know how it can take time for a new government entity to evolve and develop the practices by which it executes on its authorities. That is especially the case in a situation like this, where I&A was relatively recently inserted as a new intelligence agency in a field of agencies with sometimes overlapping authorities and areas of responsibility. If confirmed, I will assess the fit between I&A's authorities and its statutory mission and work with this Committee to address any gaps.

QUESTION 10. What unique role should I&A play in supporting the efforts of DHS entities to combat trade-based money laundering, illegal bulk cash transfers, exploitation of money service businesses, and other illicit money flows that support the drug trade and other security challenges?

I&A's Transnational Organized Crime Mission Center is a strategic analytic hub that supports efforts to counter transnational organized crime networks and facilitators. I&A is able to bring data from across DHS together and collaborate with the Intelligence Community, the DHS components, other government agencies, foreign partners, and state, local, tribal, territorial, and private sector partners to produce intelligence that enables operators to identify and mitigate this illicit activity. As a private citizen, I am not yet in a position to evaluate I&A's activities in this area, but if confirmed, I look forward to learning more about the mission and operations of the Center, and ensuring that they are aligned with I&A's overall mission and goals.

QUESTION 11. What should be the role of I&A's Economic Security Mission Center: who are its customers; and how does its mission differ from the Treasury Department's Office and Intelligence and Analysis (OIA) and other offices and bureaus tasked with financial intelligence?

As I understand it, I&A's Economic Security Mission Center supports DHS's equities in the economic security space. DHS has significant responsibilities through multiple components as it relates to supply chain security, intellectual property theft, illicit trade and other areas of activity affecting our national economic security. As Chief Intelligence Officer of the Department, the Under Secretary for I&A has the unique ability to combine and synthesize economic-security related data from across Departmental components' intelligence units to support products then disseminated to our state, local, tribal, and territorial, and private sector partners at the lowest possible classification levels. I recognize that the Treasury Department also plays a long-standing and critical role in financial intelligence that dates to 1789 in support of

Treasury's missions, including economic sanctions and stopping terrorism and financial crimes.

If confirmed, I will work to ensure that I&A is effectively coordinating with the Department of Treasury, Department of Commerce, the U.S. Trade Representative, DHS Components, and the Intelligence Community to ensure we are adding value and avoiding duplication of effort. I will ensure that I&A is most effectively utilizing its access to data held by DHS components' intelligence units and its statutory coordination with state, local, tribal, territorial, and private sector partners to provide unique analytic insights for DHS and other policymakers and operators.

QUESTION 12. If confirmed, one of the responsibilities you will have as DHS's Chief Intelligence Officer (CINT) is to exercise leadership and authority over intelligence policy throughout the Department. This means you have a role in other, non-NIP, DHS operational components such as Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), Transportation Security Administration (TSA), Coast Guard, and Secret Service, all of which have their own non-NIP intelligence functions.

A. Does the Under Secretary for I&A have the authority to integrate intelligence activities and analysis effectively from these various components?

From my understanding as a private citizen, I believe that the Under Secretary for I&A has the needed authorities to accomplish this task. However, if confirmed I will carefully assess the integration of the DHS Intelligence Enterprise and undertake any efforts needed to ensure further synchronization. I would also work with I&A's Congressional oversight committees to ensure that any such assessments are appropriately shared with Congress for their due consideration.

B. What is your assessment of efforts to date to improve integration between I&A and the other components?

From my awareness as a private citizen, I believe that significant progress has been made on integrating the DHS Intelligence Enterprise and coordinating I&A's operations with those of the other DHS components. If confirmed I will have the opportunity to assess the level of integration in the DHS Intelligence Enterprise and will undertake any efforts needed to ensure further synchronization.

C. Should the positions of Under Secretary for I&A and CINT be separated?

Speaking as a private citizen who has not executed the responsibilities of the CINT or the Under Secretary for I&A, it seems logical that the Chief Intelligence Officer for the Department of Homeland Security would also be the official assigned with leading the organization's primary producer of intelligence. However, if confirmed I will certainly

be attuned to any information – including input from Congress – that may run contrary to that understanding.

Priorities and Performance

QUESTION 13. If confirmed, how will you evaluate whether your tenure as Under Secretary for I&A has been a success?

I am a strong proponent of establishing key performance indicators and feedback mechanisms that enable an organization to continuously evaluate and improve its performance. If confirmed, I will put these performance measurement tools in place; will use them to measure our performance – including my own – and will continuously evaluate the feedback we receive from our customers. At the end of the day, my success as Under Secretary for I&A will be based on (a) how well I have supported and enabled my I&A colleagues to excel in their homeland security intelligence mission and (b) how well the organization delivers for its customers, especially its state, local, tribal, territorial, and private sector partners.

QUESTION 14. Have you discussed with the Secretary of Homeland Security his specific expectations of you, if confirmed as Under Secretary for I&A, and his expectations of I&A as a whole? If yes, please describe those expectations.

Yes, I have spoken with the Secretary about his expectations of I&A and me, and he has high expectations for both of us. Specifically, he clearly laid out his expectations that I do everything in my power to support and further develop I&A's ability to identify threats to the homeland and to provide DHS's federal, state, local, tribal, territorial and private sector partners with the timely actionable information and intelligence they need to meet those threats.

QUESTION 15. Have you discussed with the Director of National Intelligence her expectations of the relationship between I&A and the Office of the Director of National Intelligence and other elements of the IC? If yes, please describe those expectations.

I have briefly discussed this position with the Director of National Intelligence, and I expect that, if confirmed, I will work closely with her and other elements of the Intelligence Community to ensure that I&A is supporting the national intelligence mission and priorities.

QUESTION 16. What do you believe are the most critical analytic priorities for I&A today?

The most critical analytic priorities for I&A relate to the intelligence support we provide to our fellow DHS components and to our state, local, tribal, territorial, and private sector

partners. As Secretary Mayorkas has stated, DHS is fundamentally a department of partnerships. This is at the core of what DHS does, and it cannot be successful in countering threats without strong partnerships both across the federal government and with the local communities it serves. This is especially true for I&A, which was established in part to fill a void that existed within our Nation's intelligence and information sharing architecture between federal and non-federal partners. If confirmed, I will ensure that I&A continues to strengthen these partnerships, including I&A's partnerships with the fusion centers and the state, local, tribal, territorial, and private sector community, and to improve on the sharing of timely and actionable information with these partners.

QUESTION 17. I&A has many customers competing for analytic capacity. Who are I&A's top five customers?

Due to the unique nature of its statutory authorities, I&A has one of the most wide-ranging customer sets. From my understanding, the primary customers include the DHS Secretary and components, federal policymakers, the US Intelligence Community, state, local, tribal and territorial officials and the private sector.

Workforce

QUESTION 18. What is your plan to address morale at I&A and why is it likely to succeed?

First and foremost, I would like to acknowledge the silent dedication of the I&A workforce. As a prospective future leader of these national security professionals, I believe it is important to register my respect for their expertise and commitment to the American people. I know that job #1 for the next Under Secretary is to provide the workforce with the support and leadership necessary to address any underlying morale issues.

I have held a number of leadership roles in federal law enforcement and national security organizations, and I have always been impressed with the commitment and passion demonstrated by the staffs of these organizations, despite the often trying conditions and circumstances of their work assignments. So long as they are given a clear mission and strong support from their leadership, they have been willing to take any hill in the effort to protect our country. From what I know of the I&A staff, they seem to be made from the very same mold, and I expect that they will respond – and are already responding – similarly to the supportive leadership that Secretary Mayorkas is bringing to the DHS intelligence enterprise.

QUESTION 19. Do you have a human capital strategy to recruit and retain the “best and brightest” to I&A?

It is my understanding that I&A has made considerable progress in workforce management. If confirmed, I will commit to attracting and retaining the “best and brightest” to I&A. I will also focus on recruiting a workforce that is diverse, which will enrich the depth and quality of the intelligence that I&A provides to its customers. It all begins and ends with putting the right people in the right positions – and then providing them with the necessary training, support and professional development.

In terms of retention, I&A can continue to make progress through the development of additional career paths and through work-life balance policies with flexible work scheduling and a robust and effective hybrid telework program. Additionally, I&A should work to further streamline how intelligence training and professional development is delivered across I&A and continue to enhance the culture of learning and continuing education throughout all parts of the organization. As I understand it, recent efforts along these lines have been largely effective, with I&A seeing historically low attrition rates.

QUESTION 20. Are there any reforms you plan to take to improve the skill set and experience profile of the I&A workforce?

If confirmed, I will commit to investing in and building upon current efforts to enhance the skill set and experience profile of the I&A workforce across the employment life-cycle. I&A should focus on developing in-depth entry-level training starting at the onboarding stage. Rotational assignments across DHS and the IC can broaden and deepen the experiences of the workforce. Finally, I&A must focus on identifying and nurturing high performers throughout the organization to develop a cadre of I&A employees prepared for formal leadership roles.

QUESTION 21. A significant portion of I&A’s budget has been used for contractor support. What are the appropriate roles for contractor staff within I&A and what, in your view, is the appropriate contractor-to-employee ratio?

It is my understanding that I&A, in direct response to feedback from the Committee, has continued to reduce its reliance on contractor staff. That said, there are skills and capabilities that are often more appropriately and efficiently maintained through contractors, who can often be effectively used to satisfy short-term staffing or mission requirements or provide skill sets that are difficult to maintain due to an extremely competitive labor environment. If confirmed, I look forward to assessing the balance of contractors to permanent employees, and to working with DHS leadership and Congressional oversight committees as appropriate to ensure the appropriate resources for both permanent staff and contract support.

QUESTION 22. Do you believe that contractor staff should serve as intelligence analysts? If yes, under what conditions?

From my former government experience with the Intelligence Community, I recognize that it is generally preferable that intelligence analysts are federal employees who are more likely to stay in position over the long term and develop the subject-matter expertise that produces the best analytical product. I also recognize the value of a mixed workforce that includes both contractors and government employees, just like what is found in most federal agencies, and the flexibility that contractors afford the IC to quickly mobilize personnel against evolving operational needs and threats without the red tape and delay that comes with hiring new full-time employees. If I am confirmed, I will closely examine I&A's reliance on the contract workforce and will ensure that it has the right mix of contractors and government employees to optimize its ability to meet its mission objectives with both agility and expertise.

QUESTION 23. How will you manage the analysts' career paths to ensure that they have opportunities to serve in DHS or elsewhere in the IC at the senior-most levels?

If confirmed, I will work with training professionals and others across and beyond I&A to support analysts' career paths and will take the steps necessary to develop effective leaders now and tomorrow across I&A – to include analysts – so they are equipped with the leadership competencies and soft skills to advance into more senior positions in DHS or elsewhere in the IC. For example, I&A can support its analysts' careers by supporting rotational assignments that both broaden and deepen knowledge, experience and relationships across DHS and the IC. It must also continue to build career paths for the diverse workforce representing functions well beyond intelligence analysis – to include information technology, management analysis, security and other functions – so that all I&A employees have a clear path for career development and advancement.

QUESTION 24. If confirmed, do you plan to provide additional opportunities for I&A analysts to work directly with I&A customer groups to improve the level of collaboration between I&A analysts and the customers they serve?

Yes, I plan to increase the opportunities for I&A employees to work on detail with their IC, the DHS Intelligence Enterprise and our state, local, tribal, territorial, and private sector partners to strengthen coordination, communication, processes, and awareness of customer needs and capabilities.

QUESTION 25. I&A has undergone frequent realignments since it was established. Are you satisfied with the current organization of I&A, or do you intend to reorganize the office? If the latter, how would you organize I&A, if confirmed as Under Secretary for I&A?

As a private citizen, I have not had the ability to do a thorough review of I&A's current structure. I recognize that realignments that occur too frequently can be difficult on a

workforce and be perceived as realigning for the sake of it. That said, I have never been reluctant to make organizational changes when needed. However, I have always felt it invaluable to the soundness – and the perceived soundness – of these changes that they happen only after a probing examination of the organization from the inside. If confirmed, I will work with the I&A workforce and senior leadership to expeditiously assess how well I&A's current structure is functioning and to determine if any additional changes are needed. I would also keep I&A's Congressional oversight committees fully and currently informed if it is determined that organizational changes are necessary.

Fusion Centers and Information Sharing

QUESTION 26. I&A provides support to state and local Fusion Centers, including with I&A representatives to the Centers.

- A.** Do you believe the current level of Fusion Center staffing by I&A is sufficient? How would you improve the current Fusion Center model?

Fusion centers provide a critical intelligence and information sharing resource to state and local governments, and the presence of I&A personnel at those centers is a critical element of our state, local, tribal, territorial and private sector partnerships. My understanding is that a small number of fusion centers lack a dedicated I&A employee on site, and that those fusion centers would like a dedicated I&A employee onsite. If confirmed, I will quickly assess I&A's overall deployment across the country and determine where additional resources may advance the agency's mission.

- B.** How can Congress measure the effectiveness of Fusion Centers? How do you hold them accountable when each one is uniquely structured and operated by a particular state?

My understanding is that since 2011, I&A has led an annual assessment process with the National Network of Fusion Centers (NNFC). The annual assessment is based on self-reported data and evaluates the performance of the 80 state and local fusion centers against a common set of measures related to key outputs and direct outcomes. If confirmed, I will work closely with the NNFC to refine this evaluation process and strive for enhanced consistency and performance across the Nation's fusion centers.

Management

QUESTION 27. What do you believe are the most important management-related challenges facing I&A today?

If confirmed, I will do a thorough assessment of I&A's management-related challenges. I expect that the challenges will be to improve employee morale, to continue to build a

culture of teamwork and mission focus, and to ensure that the workforce has the support, resources and policies necessary for I&A to be an impact player in the homeland security effort.

QUESTION 28. Does I&A tie budgets and financial planning to requirements through a defined and stable long-term budgeting, planning, and programming process? If so, do you have confidence that the process effectively serves its purpose?

Given the classified nature of I&A's budget, I am not aware of I&A's current budgeting and financial planning. However, I do believe that stable long-term budgeting and planning are critical to effectively running and maturing an organization. If confirmed, I will certainly work with I&A's management team to ensure that I&A's budget is aligned with the national and departmental missions defined by the Secretary, the DNI, the President and Congress.

QUESTION 29. Do you believe DHS I&A should have outcome measures for antiterrorism and intelligence-related programs consistent with those measures established by other government agencies? Please explain.

Yes, I support the use of outcome measures for antiterrorism and intelligence-related programs. I believe it is important for any government agency, including I&A, to have outcome-based performance measures. These metrics are a key tool for DHS leadership and the Congress to ensure I&A is making the most effective use of taxpayer dollars in carrying out its intelligence mission. If confirmed, I pledge to ensure that I&A works closely with the ODNI and other IC members to ensure I&A is measuring its programs appropriately and meeting its goals. I will also look for measures that represent best practices by other government agencies that could be applied to the outcome measurement effort at I&A.

QUESTION 30. How do you intend to measure financial and human capital processes as a part of I&A's performance measures?

I&A should have a robust data-driven performance analytic capability to measure the full spectrum of I&A personnel functions from recruiting, hiring, personnel action processing, resource allocation and diversity measures. If confirmed, I look forward ensuring I&A has those measures and is leveraging them to understand the health of its personnel functions.

I&A's Relationship with the Intelligence Community

QUESTION 31. I&A has responsibilities for disseminating information from within DHS to the broader IC.

A. What role should I&A play in disseminating information obtained from other elements of DHS to the IC?

My understanding is that I&A serves as a critical nexus for information sharing between DHS and the IC. As the DHS agency that is statutorily designated as part of the IC, it is fitting that I&A coordinate and facilitate this information sharing, in full compliance with all applicable laws, policies and guidelines.

B. What kinds of information should be so disseminated, and from what elements of the DHS?

My understanding is that I&A relies on its subject matter experts in the field and at headquarters to identify and analyze a broad range of information and intelligence from across DHS that relates to threats to the homeland. This includes law enforcement information, suspicious activity reporting information, unique travel and immigration data, seizures data, and cyber intrusion data. Working with partners from across the Intelligence Community, and from the state, local, and private sector, these experts disseminate information to the necessary stakeholders on threats through a variety of mechanisms—including raw and finished intelligence reporting, briefings, and engagements. If confirmed, I will work with component leadership, as well as with headquarters offices including the Offices of Privacy, Civil Rights and Civil Liberties (CRCL), and Strategy, Policy and Plans, to ensure that policies governing information sharing with I&A appropriately protect Americans' private information, while ensuring Intelligence Community access to critical data to support robust and complete analysis and products.

C. What limitations should apply to such disseminations, if any?

Specifically, I&A must ensure that disseminations are consistent with the U.S. Constitution, the law, Executive Order 12333 and I&A's Intelligence Oversight Guidelines and are appropriately protective of privacy and civil liberties. As noted above, if confirmed, I will examine this information sharing to ensure the appropriate limitations are in place and effective, and I will work with Congress and DHS leadership to make any necessary changes.

QUESTION 32. Please describe areas in which I&A requires assistance from other IC elements.

To be fully effective, I&A must be able to access and leverage both DHS's data and the holdings of the Intelligence Community. Bolstering the information flows and ensuring that I&A is effectively utilizing both IC holdings as well as DHS intelligence and information will be a critical priority moving forward. If confirmed, I believe my previous national security and intelligence experience will prove an asset in establishing

strong working relationships across the IC and advocating for appropriate assistance and collaboration, while deconflicting overlap of mission sets and eliminating unnecessary duplication.

QUESTION 33. While the mission of I&A is statutorily unique, the particular program activities carried out at the division and branch levels are not. If confirmed, will you commit to reviewing I&A programs to ensure that they are not redundant or duplicative of any other Federal, state, local, or private efforts?

Yes, I will readily make that commitment, as operational redundancy is a problem that requires constant vigilance by leaders of agencies in the law enforcement and intelligence communities. If confirmed, I will commit to reviewing I&A programs to ensure that they are not duplicating efforts and are instead adding unique value to the intelligence and homeland security communities.

QUESTION 34. Do you believe that the relative roles of DHS and the FBI are clear with respect to the sharing of information domestically?

I believe that DHS and FBI have complementary roles with respect to information sharing domestically. As I stated above, however, there is always a need to monitor the implementation of these complementary roles to avoid redundancy or confusion between the agencies. Having worked for many years in and with the FBI, I should be well positioned to undertake that monitoring with I&A's counterparts at the FBI. If confirmed, I will work closely with the FBI to ensure our joint efforts are aligned, clearly defined to our respective stakeholders, and coordinated in a way that supports the missions of both agencies.

QUESTION 35. How do you envision the relationship between DHS and FBI in providing intelligence support for law enforcement personnel?

Having previously worked extensively at and with the Department of Justice and the FBI, I have developed an understanding of the FBI and its intelligence operations. If confirmed, I am committed to working closely with the FBI to ensure that I&A's capabilities are used to meet their intelligence needs and that their work supports our mission. Our efforts must be complementary and supportive of each other's respective missions, and we must work together to maximize the intelligence support we provide to law enforcement personnel throughout the country.

I&A's Relationship with State, Local, Tribal, Territorial, and Private Partners

QUESTION 36. What role should I&A play in disseminating information obtained from other IC elements to state, local, tribal, territorial, and private partners?

I&A plays a vital role in that intelligence dissemination. In fact, I&A is charged by statute with delivering intelligence to state, local, tribal and territorial and private sector partners and developing intelligence from those partners for DHS and the Intelligence Community.

QUESTION 37. What is the proper role of I&A in framing requests for information from state and local law enforcement officials, as well as retaining such information and disseminating it to the IC?

As noted in the above response, I&A is charged by statute with delivering intelligence to state, local, tribal, and territorial partners, and sharing information bidirectionally with those partners and the federal government. In carrying out both of those roles, I believe it is critically important that I&A personnel be properly trained in the intelligence oversight guidelines and fully understand the policies related to civil liberties and privacy. In addition, any information derived from communications with state and local partners should be thoroughly vetted to ensure the appropriate protection of original content prior to being disseminated to other IC partners in response to a similar inquiry. If confirmed, I am committed to working with the Office of Civil Rights and Civil Liberties, the Office of Privacy, the Office of General Counsel, and other appropriate offices to ensure appropriate training and utilization of applicable guidelines.

QUESTION 38. If confirmed, what measures would you take to improve the effectiveness of efforts to share information in both directions?

If confirmed, I commit to working with I&A's partners to improve DHS's intelligence dissemination, including by ensuring that customers are able to consume DHS information across multiple media applications and that I&A has the right communication and dissemination tools and capabilities in place to enable enhanced information sharing in both directions.

QUESTION 39. What types of information (e.g. threat information, infrastructure vulnerability, etc.) are appropriate for sharing?

I&A should share as much information as appropriate and possible that is of a quality and timeliness to help policymakers and operators at all levels of government and in the private sector to prevent, protect against, and effectively respond to threats to the homeland. At the same time, information sharing must be balanced with the need to protect investigations, sources and methods, and the privacy, civil rights, and civil liberties of U.S. persons. If confirmed, I will work diligently with I&A's broad set of stakeholders and oversight officials to ensure we are striking the right balance.

QUESTION 40. Please provide your view on I&A sharing with private sector customers. If yes, if you are confirmed, what additional steps will you implement to

ensure that I&A private sector customers are provided with timely and relevant intelligence reports?

From my perspective, I&A's partnerships with the private sector are critical to protecting the homeland. The private sector owns and operates the vast majority of our nation's critical infrastructure. If confirmed, I will continue to strengthen I&A's existing private sector partnerships and cultivate new ones. I will also work to ensure that I&A is providing timely and actionable intelligence and information to private sector partners, so they can more effectively protect our critical infrastructure.

In my previous government experience, I was always impressed with the willingness and enthusiasm of private industry to cooperate with the government's national security apparatus, not only for their own infrastructure protection interests, but also for the nation's broader national security interests. The more I&A can solidify that partnership on the intelligence front — especially by providing private sector partners with meaningful intelligence — the stronger those cooperative relationships will become, the more private industry will engage with the homeland security effort, and the more I&A will benefit from reciprocal intelligence and from the tremendous expertise that private industry can bring to the homeland security effort.

QUESTION 41. Do you intend to work with I&A customers to determine training needs and requests?

If confirmed, I will work to strengthen partnerships with customers across the DHS Intelligence Enterprise and at the state and local level to identify opportunities to address training needs and requests. I look forward to hearing from these customers, including the fusion centers, to better understand their needs and where we can help address any gaps.

QUESTION 42. If confirmed, what assistance would you expect from state, local, tribal, territorial, and private partners?

If confirmed, I commit to strengthening I&A's critical partnerships with state, local, tribal, territorial, and private sector entities. I intend to work with these stakeholders to improve two-way sharing of information and analytical expertise in order to meet our shared goals of a more secure homeland and the protection of critical infrastructure.

I&A's Relationship within DHS Intelligence Enterprise and DHS

QUESTION 43. If confirmed, what assistance would you expect from the rest of DHS, and the other components of the DHS Intelligence Enterprise?

If confirmed, as the Chief Intelligence Official of DHS, I commit to strengthening the DHS Intelligence Enterprise (IE) and working with the IE, via the Homeland Security Intelligence Council (HSIC), to ensure that DHS's national and departmental intelligence functions are being met effectively. While the Chief Intelligence Official lacks operational control over all of DHS's intelligence capabilities, the HSIC is one forum for deconflicting, coordinating, and integrating DHS's intelligence activities. I would expect these components to be active members of the HSIC so that we can have a unity of effort across the DHS IE. I will focus on strengthening the coordination across the IE and ensuring that components share information from unique DHS datasets to enhance our analysis.

QUESTION 44. What do you believe are the key barriers to enhanced coordination and integration? If confirmed, what steps would you take to overcome these barriers?

As a private citizen, I have not been able to identify and assess the impact of any existing barriers that may be impeding integration and coordination between I&A and its fellow DHS agencies and other partners. From my experience, however, I know that there are always obstacles of varying degrees when different agencies try to reconcile and align their operations. Those obstacles are the product of the different procedures, policies, priorities and authorities that shape the culture and operational rhythm of each agency. It is critical to openly recognize these obstacles in any joint or collective government enterprise and to develop the common policies, procedures and team dynamics that will align the agencies on their joint mission.

QUESTION 45. Do you believe that each DHS component should retain its own law enforcement information gathering and analysis function, or would all DHS components be better suited by having I&A assume these efforts, given its role in facilitating the sharing of law enforcement and intelligence information?

As a private citizen, I understand that DHS has a number of components with discrete law enforcement authorities and responsibilities, and I would estimate that each has developed information gathering requirements and processes that are tailored to its own mission demands. I do not believe that I&A should assume the intelligence functions or efforts of the DHS components, as I&A lacks the resources and sufficient integration into each of the component's operations to do so effectively. Instead, if confirmed as Under Secretary, I will work not to centralize or control all DHS intelligence activities and functions within I&A, but rather to maximize the effectiveness of intelligence across DHS by better aligning efforts across the diversity of departmental missions and capabilities.

QUESTION 46. Some DHS components have their own individual, non-NIP, intelligence support units that provide operational support to their field elements. How does I&A uniquely augment these efforts?

My understanding is that the Chief Intelligence Officer, which is the Under Secretary of I&A, works with the DHS Intelligence Enterprise, via the Homeland Security Intelligence Council, to coordinate and streamline efforts across the enterprise on analysis and production, collection, and training, and to ensure unity of effort across the components.

Additionally, while the components are focused on their individual missions, I&A can produce tailored all-source analytic products that support and inform the components' intelligence efforts and run a centralized collection requirements management process that supports inclusion of DHS needs in the formulation of the national intelligence priorities.

QUESTION 47. What process is in place to ensure that I&A does not duplicate the efforts of these intelligence support units?

My understanding is that I&A coordinates with the DHS Intelligence Enterprise through the Homeland Security Intelligence Council to avoid duplication of effort. If confirmed, I will review the current mechanisms to identify potential process changes to better resolve de-confliction and coordination challenges.

Domestic Intelligence Responsibilities

QUESTION 48. Please describe any and all intelligence roles I&A and other, non-NIP, DHS components perform, other than analysis.

I&A conducts the full range of activities beyond analysis, to include collection via overt or publicly available sources, carrying out counterintelligence activities at DHS, producing and disseminating raw and finished intelligence, and facilitating information sharing, among others. The components carry out such intelligence activities in support of their specific operational missions.

QUESTION 49. What policies should govern I&A's use, retention, and dissemination of U.S. person information? How should these policies differ, if at all, from other IC elements?

Executive Order 12333 requires that elements of the IC collect, retain, and disseminate information regarding U.S. persons only in accordance with procedures established by the head of the element or department and approved by the Attorney General. These procedures are known as I&A's Intelligence Oversight Guidelines, and like the guidelines governing other IC agencies' activities, they apply minimization procedures to U.S. person information. In general, if confirmed, I commit to reviewing current policies governing the use, retention, and dissemination of U.S. person information and

working with DHS leadership, including the Offices of Privacy and Civil Rights and Civil Liberties to ensure consistency with all applicable laws and the Constitution.

QUESTION 50. What limitations exist with regard to the collection, retention, and analysis of information related to First Amendment-protected freedoms of speech, association, and religion?

I understand I&A is limited to intelligence activities in support of national and departmental missions. Collection activities are further limited to information collected overtly or through publicly available sources. I&A is prohibited from conducting intelligence activities regarding U.S. persons solely for the purpose of monitoring activities protected by the First Amendment. I&A's intelligence oversight guidelines allow for collection of U.S. person information only where there is a reasonable belief of a nexus between the subject and one or more of I&A's defined collection categories (such as terrorism information, counterintelligence, threats to safety, etc.), and where the information is necessary for the conduct of an authorized I&A mission.

If confirmed, I would make the DHS Office of the General Counsel, the I&A Intelligence Oversight Office, the DHS Chief Privacy Officer, and the DHS Officer for Civil Rights and Civil Liberties some of my closest partners to ensure that all I&A intelligence activities are consistent with the Constitution, our laws, and policies intended to protect First Amendment-protected activities. We can only succeed in our mission if we maintain the trust of the American people.

QUESTION 51. What reforms of I&A do you believe are necessary based on the findings and recommendations of the Office of the General Counsel in its January 6, 2021, report on Portland operations? Please address management, command and control, communications, planning, hiring, training, oversight and work climate.

The report made a series of recommendations related to improving management, command and control, communications, planning, hiring, training, oversight and work climate at the Office of Intelligence and Analysis. If confirmed, I plan in my very first days to meet with the Office of General Counsel, my Intelligence Oversight Officer, the DHS Office of Privacy, the DHS Office of Civil Rights and Civil Liberties, and the I&A workforce to better understand what actions I&A has taken since the review and the extent to which recommendations in the report have or have not been implemented, and to identify additional improvements across I&A management and processes as necessary.

I was particularly concerned with the report's finding that some I&A professionals found it difficult to raise concerns they had during the activities of 2020. If confirmed, I am fully committed to providing leadership for the I&A workforce that makes it clear from

the top that I&A values analytic integrity and independence and encourages the generation and consideration of alternative views and perspectives.

QUESTION 52. The January 6, 2021, OGC report described the use of “Operational Background Reports” (OBRs, or “baseball cards”).

A. Do you believe it is appropriate for I&A to use OBRs for U.S. persons?

While I have a limited understanding of the use of OBRs to date, it would seem that their use could be appropriate under certain circumstances—namely, that any such collection be based on a reasonable belief of a nexus to one or more of I&A’s defined collection categories. With that said, it is clear to me that consistent training, policies, and procedures are critical in order to ensure that any collection of U.S. person information is consistent with I&A’s limited authorities in this space, and is subject to rigorous oversight to guard against inadvertent intrusions into U.S. persons’ privacy, civil rights or civil liberties.

B. If yes, under what circumstances and subject to what content limitations?

As the OGC report noted, “OBRs can be a valuable tool to produce the background of a person who poses a threat to the homeland or is accused of committing an act that threatens homeland security or law enforcement officers’ lives.” The report notes, however, that during I&A activities in Portland over the Summer of 2020, there may have been instances where OBRs were misused and that additional training and procedures could benefit both I&A leadership and collectors. If confirmed, I will meet with the Office of General Counsel, my Intelligence Oversight Officer, the DHS Office of Privacy, the DHS Office of Civil Rights and Civil Liberties, and the I&A collectors to better understand how these OBRs are used operationally, to assess any limitations on their use that have been put in place since 2020, and to make any further reforms that may be necessary to ensure that such intelligence activities are conducted appropriately.

QUESTION 53. Under what circumstances, if any, do you believe it is appropriate for I&A to conduct custodial debriefings of U.S. persons?

My understanding is that the Office of Intelligence and Analysis is limited in its collection authorities, including on U.S. persons, to that conducted overtly or through publicly available sources, and only in support of authorized national and departmental missions. I&A’s Intelligence Oversight guidelines further require that its collectors use the least intrusive means possible and consult with legal counsel to ensure that adequate notice has been provided to an individual consenting to collection. If confirmed, I will meet with the Office of General Counsel, my Intelligence Oversight Officer, the DHS Office of Privacy, the DHS Office of Civil Rights and Civil Liberties, and I&A collectors to better understand how these limitations have been applied operationally, and I commit

to working closely with this Committee and other oversight entities to ensure that such collection is conducted appropriately.

Open Source Reporting

QUESTION 54. What do you believe are the appropriate metrics for determining the value of I&A's Open Source Intelligence Reports?

While my knowledge is that of a private citizen, I am aware that I&A's authorized missions include efforts to inform about the threats of terrorism and other threats to homeland security, and efforts to protect critical infrastructure and key resources. I believe that I&A should have metrics by which to measure whether its open source collection efforts are effective and appropriate. This could include measures related to how open source reports were incorporated into intelligence analysis and production, the degree to which open source collection met mission priorities and collection requirements, and the compliance issues related to legal and policy requirements that protect privacy, civil rights, and civil liberties, including minimization of U.S. persons.

QUESTION 55. What specific substantive expertise should I&A's open source collectors have?

As a private citizen, I do not have substantive knowledge of the current expertise and training requirements for these collectors. However, I recognize the importance of I&A's open source collection mission and, in turn, the importance of having collectors with the expertise and training necessary to do this collection in a targeted and effective manner. Based on the OGC report of I&A's activities in Portland, it is clear that at least one topic of that training and expertise must be the relevant laws and policies relating to protection of privacy, civil rights, and civil liberties, as well as knowledge of I&A's defined collection categories and how to determine their applicability. If confirmed, I will make an assessment of I&A's open source collection capabilities and work with its partners, including the Office of the General Counsel, the Privacy Office, the Office for Civil Rights and Civil Liberties, and other Intelligence Oversight offices, to ensure that the appropriate training and expertise requirements are in place for these open source collectors.

Analytic Quality

QUESTION 56. How would you assess I&A's analytical tradecraft, analyst training, editing, quality control measures, approval procedures, and independence from political considerations?

As a private citizen, I do not have substantive knowledge of the standards in place for each of these measures and procedures. However, if confirmed I commit to working with

partners including the Office of the General Counsel, the Privacy Office, the Office for Civil Rights and Civil Liberties, and other Intelligence Oversight offices to ensure that I&A's efforts in each of these categories is consistent with the expectations set by the Secretary, DHS senior leadership and the DNI. I will be particularly vigilant to make sure that I&A's analytical judgments are completely insulated from political considerations and influence.

QUESTION 57. How does I&A ensure that all I&A analytic reports meet well-defined IC analytic tradecraft standards prior to production of intelligence that is disseminated to the IC?

As a private citizen, I do not have substantive knowledge of the analytic tradecraft standards currently in place. However, if confirmed I commit to ensuring that I&A's efforts measure up to the expectations set by the Secretary and DHS senior leadership as well as the standard set by the Director of National Intelligence.

QUESTION 58. Should I&A be an intelligence aggregator or a value-added provider of analysis? If confirmed, how will you ensure that I&A reflects your vision?

I do not think this is an either-or proposition. I&A is statutorily mandated to share information with its state, local, tribal, territorial and private sector partners, and over the course of its existence it has been developing the mechanisms and relationships that allow it to expand and deepen that sharing. In addition, I&A has proven that it is well positioned to provide those same partners with valuable analytic products about the threats to the homeland and our nation's critical infrastructure. Given I&A's access to unique DHS data holdings, it is able to provide a more complete picture of the homeland threat environment.

Congressional Oversight

QUESTION 59. Under what circumstances, if any, is it appropriate to brief the Chairman and Vice Chairman and not the full Committee membership?

Intelligence agencies must keep the intelligence committees fully and currently informed of all intelligence activities, in keeping with the obligation imposed on the IC in the National Security Act of 1947. My understanding is that limiting disclosure to the Chair and Vice Chairman is only appropriate when necessary and essential in light of extraordinary circumstances affecting the vital national security interests of the United States, as determined by the President pursuant to Section 503(C)(2) of the National Security Act of 1947. To my knowledge, I&A has never sought such an arrangement.

QUESTION 60. If confirmed, do you pledge to provide all of I&A's unclassified and classified intelligence products to this Committee?

I understand that it is the statutory obligation of every intelligence agency to keep Congress fully and currently informed of intelligence activities. If confirmed, I pledge to ensure the Committee has access to intelligence products necessary for full and proper oversight of I&A's intelligence activities.

Unauthorized Disclosures of Classified Information

QUESTION 61. Please describe the actions you will take, if confirmed, to prevent, detect, and report unauthorized disclosures of classified information.

The protection of classified information from unauthorized disclosure is critical to our national security. Throughout my career in law enforcement and national security, I saw all too often how unauthorized disclosures can undermine our ability to protect our communities and our nation. It is my understanding that the Under Secretary of Intelligence and Analysis serves as the Department's counterintelligence lead. If confirmed, I will work with the Department's Chief Security Officer, Inspector General, and other senior officials to ensure that the Department has appropriate processes and sufficient training to prevent the unauthorized disclosure of classified information.

Additional Questions from Vice Chairman Rubio

QUESTION 1: You noted in responses to the standard Committee questionnaire that – upon reviewing your records – you “did work on one occasion for one state-owned enterprise, the Chinese [sic] National Offshore Oil Corporation, which is a client of the China office of our firm.” You further characterize the work as supervising “an associate drafting a memo summarizing U.S. law.”

A. When did you perform this work? Please provide a specific timeframe to include month(s) and year(s).

As I indicated in my Committee questionnaire, I billed 2.8 hours of work to the Chinese state-owned oil company, the China National Offshore Oil Corporation (CNOOC), which is a client of the China office of our firm. This occurred over two days in April of 2018.

B. What was the general topic of the “memo summarizing U.S. law”?

A Davis Polk partner who does sanctions work was examining the potential U.S. government response to allegations in the then-recently published Section 301 Report by the Office of the U.S. Trade Representative. That report alleged that in 2012, CNOOC had received information from the Chinese intelligence services that had assisted the company in negotiations with U.S. companies.

This allegedly happened on two occasions in 2012, prior to the 2015 agreement by which China and the US agreed not to engage in cyber intrusions to obtain “confidential business information . . . with the intent of providing competitive advantages to companies or commercial sectors.”

The sanctions partner was looking into the trade, tariff and other potential civil or administrative responses by the U.S. government. To be complete, he also wanted a summary of any criminal statutes that could conceivably be implicated by the alleged conduct in 2012. He asked me to have an associate in the white-collar group draft a short memo listing and summarizing any such statutes. I supervised and reviewed the associate’s work on that memo.

QUESTION 2: In response to Question 13 on the standard questionnaire related to published writings, speeches, and other published materials, you did not list an October 2020 letter you signed and – according to the *Washington Post* “organized initially,” concerning the 2020 presidential election candidates.¹ The *Washington Post* further referenced it as “the letter circulated by Wainstein...”

A. Do you agree with the *Washington Post*’s characterization and attribution of the letter?

You are correct that I did not list the October 2020 letter that was issued and signed by myself and 19 other former United States Attorneys who served under Republican presidents in response to Question 13 of the Committee questionnaire. I did not realize that that question – which asked for “published writings and speeches . . . any books, articles, reports, or other published materials you have authored” – called for group letters that I had signed. For completeness, I have signed several such letters, including ones that were issued in the fall of 2020 by the group called the Former Republican National Security Officials for Biden, which I co-founded and listed in Question 15 of the Committee questionnaire as one of my “Political Activities.” I freely acknowledge those letters, and would be happy to gather any such letters I have signed over the years—at least those which I can recall at this point. Please note I have signed numerous letters in support of nominations of various individuals who have been nominated for positions in administrations of both parties and whom I have known and have worked with over the years.

The *Washington Post* is accurate in its reporting that I “organized” and “circulated” the October 2020 former United States Attorney letter, with the

¹ Hamburger, Tom and Barrett, Devlin. “Former U.S. attorneys – all Republicans – back Biden, saying Trump threatens the ‘rule of law.’” *Washington Post*, October 27, 2020, https://www.washingtonpost.com/politics/republican-us-attorneys-back-biden/2020/10/27/c1b55702-17fd-11eb-befb-8864259bd2d8_story.html

assistance of others. It is also correct that I drafted much of the text of the letter, once again with the assistance of others.

B. Did you write the letter?

See answer above.

QUESTION 3: The Office of Intelligence and Analysis (I&A) at the Department of Homeland Security (DHS) is charged with performing intelligence activities under Title 50, as well as supporting the mission of DHS, which does not always have a Title 50 connection.

A. Nearly 20 years after I&A's creation, what do you view as I&A's role in the Department and in the Intelligence Community?

By statute, I&A is a member of the Intelligence Community. I&A serves a key role carrying out intelligence activities to further national and departmental missions. This includes providing intelligence assessments to DHS leadership, operational components across the Department, state and local governments, and the private sector. When appropriate, I&A is also able to share information collected from these stakeholders with the rest of the Intelligence Community for analysis.

B. What limitations, if any, do you believe exist on the use of National Intelligence Program (NIP) funds?

My understanding is the National Intelligence Program is defined in law as the programs, projects, and activities of the Intelligence Community, as well as any other programs of the Intelligence Community designated jointly by the Director of National Intelligence and the head of a United States department or agency or by the President. As such, National Intelligence Program funds can be used to support the authorized activities of the intelligence community. If confirmed, I will work with Director of National Intelligence, our attorneys, and the Congressional oversight committees to better understand any additional limitations on the National Intelligence Program and to ensure that we are using it appropriately.

C. Do you believe I&A should continue to be fully funded with NIP dollars?

As a statutory member of the Intelligence Community, I believe it is appropriate for I&A's intelligence activities to be included in the National Intelligence Program.

QUESTION 4: Do you believe a foreign nexus needs to be present when using National Intelligence Program funding and authorities to collect and/or analyze the activities of U.S. persons?

The Intelligence Reform and Terrorism Prevention Act of 2004 redefined the National Foreign Intelligence Program as the National Intelligence Program and established a new definition of “national intelligence” in statute. National intelligence includes all intelligence, regardless of source, that pertains to United States homeland security. If confirmed, I look forward to working with my leadership, the Director of National Intelligence and the Committee to ensure that funding for I&A activities is used appropriately and as Congress intended.

QUESTION 5: The threat assessment issued by ODNI in March of 2021, titled, “Domestic Violent Extremism Poses Heightened Threat in 2021,” is 57 pages in length, most of which is either unclassified, or For Official Use Only (FOUO). Specifically, there are more than 300 footnotes, of which 26 are Secret, 113 are unclassified, and 162 are U//FOUO. At least 40 of the U//FOUO footnotes appear to be news articles available to the public from publications like the *Washington Post*, the *New York Times*, and others. Even though most of this assessment is unclassified, the American public was only able to read a four-page Executive Summary of the assessment.

- A. If confirmed, will you publicly release a redacted version of this threat assessment, which would permit the American public to read the parts of it that are unclassified and based on news stories within the context of the assessment?

If confirmed, I pledge to work with my intelligence community colleagues to ensure information is publicly disclosed when appropriate. Given that the assessment is not an I&A product, I will work with the Director of National Intelligence on determining what can be released publicly. I understand your concern regarding the potential over-use of Controlled Unclassified Information (CUI) markings, in this case FOUO, on information that may be available elsewhere publicly. If confirmed, I commit to working to address that concern where it is possible to do so without doing harm to national security objectives and I&A mission requirements.

QUESTION 6: DNI Haines noted that, in working on ODNI’s threat assessment on domestic violent extremism, released in March 2021, “the Intelligence Community did not collect and would not collect, maintain, or assess information concerning U.S. persons solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States.” Analysts at I&A spend a considerable amount of time searching public social media and other open sources for information on potential threats to the U.S. homeland, and U.S. persons are among those whose social media posts are examined.

A. When is a social media post of a U.S. person *not* protected by the First Amendment?

As is most relevant to I&A's activities, the First Amendment does not protect "true threats" incitement to engage in imminent lawless action that is likely to produce such lawlessness. If confirmed, I commit to working closely with Congressional leadership and intelligence oversight bodies to ensure that I&A's policies and procedures respect the First Amendment rights of all Americans.

QUESTION 7: Do you believe that China, under control of the Chinese Communist Party, is engaging in a zero-sum game of economic and technological competition against the United States?

It is abundantly clear to me that it is the determined policy of the Chinese Communist Party to wage and ultimately achieve dominance in an economic, technological, and geopolitical competition with the United States.

QUESTION 8: Do you believe that one of the primary goals of the CCP is to displace the United States and rewrite the international-rules based system?

It is equally clear that the CCP is intent on displacing the United States in its leadership role in the world and adapting the international world order to promote China's interests and extend its economic and political power.

Additional Questions from Senator Wyden

Data Purchases

QUESTION 1: Press stories have indicated that DHS purchases location data from data brokers ("DHS Authorities Are Buying Moment-By-Moment Geolocation Cellphone Data to Track People," BuzzFeed, October 30, 2020; "Federal Agencies Use Cellphone Location Data for Immigration Enforcement," The Wall Street Journal, February 7, 2020).

A. Under what circumstances, if any, do you believe U.S. v. Carpenter would apply to the purchase or use of this data?

My understanding is that as a general matter the Supreme Court found that the government needs a warrant to obtain cell phone location records. If confirmed, I would certainly consult with the Department's general counsel and relevant intelligence oversight authorities to ensure that any actions taken by I&A and the Department were done in a way that respects the Fourth Amendment rights of all Americans, and remain

within the bounds of my authorities and my responsibilities as Under Secretary for I&A, and the Department's Chief Intelligence Officer.

- B.** According to the BuzzFeed story, DHS's Office of General Counsel produced a memorandum addressing the legal issues related to the purchase and use of this data. Will you commit to providing Congress that memorandum or any superseding legal analyses?

If confirmed, I would certainly commit to working with the DHS Office of General Counsel to encourage them to provide all appropriate documents to Congress. My understanding is that the document is not an I&A product though, so I would have to consult with the Office of General Counsel on the matter.

- C.** If confirmed, will you commit to providing Congress with a full accounting of the datasets purchased or used by I&A or any element of the DHS Intelligence Enterprise?

It is the statutory obligation of all intelligence agencies to keep the Congressional intelligence committees fully and currently informed of intelligence activities. As such, I would provide the committees with information on the datasets purchased or used.

Border Searches

QUESTION 2: Do you believe DHS has statutory authority to force U.S. persons to unlock their devices and fine them for refusing to do so? If so, are there any statutes specifically relevant to laptops and personal devices?

I understand this issue is currently before the legal counsel for the Department. However, I agree that it is critically important to remain vigilant about protecting the constitutional rights of U.S. persons, including Fourth Amendment protections from unreasonable search and seizures. If confirmed, I would certainly consult with the Department's general counsel and relevant intelligence oversight authorities to ensure that any actions taken by I&A are done in a way that respects the Fourth Amendment rights of all Americans, and remain within the bounds of my authorities and responsibilities as Under Secretary for I&A.

QUESTION 3: In 2019, the 9th Circuit's decision in *U.S. v. Cano* limited CBP's authority to conduct warrantless device searches at the border to those involving illegal content. Could this standard be applied nation-wide so that CBP has consistent policies and procedures?

If confirmed, I would certainly consult with the Department's general counsel and relevant intelligence oversight authorities to ensure that any actions taken by I&A were done in a way that respects the Fourth Amendment rights of all Americans, and remain

within the bounds of my authorities and responsibilities as Under Secretary for I&A. With regard to the policy referenced in the question, I would defer to the CBP Commissioner regarding internal CBP policies. However, if confirmed, I would certainly encourage component heads to review their current policies to ensure they are appropriately considering the Constitutional rights of all Americans.

Torture

QUESTION 4: In April 2003, when you served as his Chief of Staff, FBI Director Mueller was seeking direct access to at least one detainee in CIA custody. You also served as Assistant Attorney General for National Security during a period of time when the CIA's Detention and Interrogation Program was ongoing.

- A. When were you read into the CIA's Detention and Interrogation Program? Were you read into the fact of CIA detention operations or the use of "enhanced interrogation techniques," or both? Did you have access to the relevant memoranda of the Office of Legal Counsel prior to their public release and, if so, when?

I do not recall if I was read into the CIA's detention program, but I do recall being read into the CIA's interrogation program and its use of enhanced interrogation techniques. I cannot recall exactly when that briefing took place, but it was at some point during my tenure as Assistant Attorney General for National Security (September 2006 through March 2008). As I recall, I was briefed on the program specifically because the National Security Division was given responsibility for assisting in the Military Commission proceedings against a number of terrorism suspects, including several who had previously been subjected to enhanced interrogation techniques. I believe the purpose of the briefing was to ensure that we understood the litigation challenges that would arise from the fact that enhanced interrogation techniques had been used on these suspects. I do not recall if I ever reviewed the relevant Office of Legal Counsel opinions.

- B. Did you have any concerns about the program or its legality and, if so, what steps did you take to address those concerns, within the government or with Congress?

While I cannot recall the specifics, I learned generally about the CIA's use of enhanced interrogation techniques—but was not fully read into the program—during my tenure at the FBI (2002-04). I had concerns about the techniques and participated in discussions within the FBI, after which Director Mueller decided not to have FBI personnel participate in interviews of detainees who were being subjected to those techniques.

Warrantless Wiretapping

QUESTION 5: According to the Department of Justice Inspector General's review of the Department's involvement with the President's Surveillance Program (the warrantless wiretapping program also known as Stellar Wind), the FBI and NSA finalized a Memorandum of Agreement in December 2002 to facilitate co-location of personnel working with the program. Beginning around February 2003, a team of FBI personnel was assigned to the NSA to manage FBI's participation in the program. You served as FBI General Counsel from July 2002 to March 2003 and subsequently as Chief of Staff to the Director.

- A.** When were you read into the NSA's "President's Surveillance Program"/Stellar Wind?

I was read into the President's Surveillance Program at some point during my tenure at the FBI between July 2002 and May 2004.

- B.** Did you have any concerns about the program or its legality and, if so, what steps did you take to convey those concerns within the government or with Congress?

By the time I learned about the program, I understood that it had been up and running for quite some time, and had been fully vetted and authorized by the Justice Department. I do not recall conveying specific concerns within the executive branch or to Congress.

- C.** Did you have any concerns about the failure to brief the full congressional intelligence committees on the program and, if so, what steps did you take to ensure that the full committees were briefed?

Aside from being aware that it was a highly-classified program, I do not recall what I knew about the limits of knowledge about the program within Congress. As a general matter, I understand that intelligence agencies have a statutory obligation to keep the Congressional intelligence committees fully and currently informed of intelligence activities. If confirmed, I am committed to meeting that standard with the full congressional intelligence committees.

- D.** The Department of Justice Inspector General has stated that the failure to read in FISA Court members and Department officials who work with the FISC "while program-derived information was being disseminated as investigative leads to the FBI and finding its way into FISA applications put at risk the DOJ's important relationship with the FISC." Did you share these concerns and, if so, what steps did you take to ensure that the FISC and relevant DOJ officials were read in?

I agree with the Inspector General that the relationship between the FISA Court and the Justice Department is a critical one. The process cannot operate effectively unless the court has complete confidence in the integrity and accuracy of the Department's representations. As such, it is critical that the Department avoid taking any actions that might jeopardize that relationship or the accuracy of its representations and advocacy before the Court. As to this incident, however, aside from being aware that it was a highly-classified program, I do not recall whether I knew the limits of knowledge about the program within DOJ or the FISA Court.

Section 215

QUESTION 6: In September 2009, you testified that "FISA Court orders under Section 215 are significantly more protective of civil liberties than the grand jury subpoenas that are regularly issued by criminal prosecutors around the country." You further testified that relevance to an investigation – the standard for a Section 215 order – "has to be explained to a FISA court judge and so the FISA court judge reviewing that factual statement as to what that connection was, and if it is clear that it was an obviously innocent day to day interaction, I think you're going to have some questions from the FISA court judge." The NSA's bulk telephony metadata program was brought under Section 215 authority in May 2006, after which you served as Assistant Attorney General for National Security.

- A. Were you aware at the time of your testimony that, unlike grand jury subpoenas, Section 215 had been used to collect millions of innocent Americans' phone records pursuant to a single court order without any subsequent FISA Court review?

As the quoted text in your question makes clear, I was making the point in my September 2009 testimony that Section 215 orders have a built-in civil liberties advantage over grand jury subpoenas – i.e. they must be approved by a federal judge, whereas grand jury subpoenas can be issued by a federal prosecutor without court approval. At some point, likely during my tenure as Assistant Attorney General, I learned that the FISA Court had authorized a bulk telephony metadata program that used Section 215 authorities to collect the metadata and that the program operated under special handling/minimization procedures. As your question points out, the FISA Court considered and authorized the government's initial application several months before the National Security Division was established, and I do not recall the FISA Court raising any questions about that authorization or its underlying legal rationale during my tenure as Assistant Attorney General.

DEA's Bulk Data Collection

QUESTION 7: In March 2019, the Department of Justice’s Inspector General released its “Review of the Drug Enforcement Administration’s Use of Administrative Subpoenas to Collect or Exploit Bulk Data,” a review of a program that operated while you served as Assistant Attorney General. According to the OIG, the failure of the Department to conduct a comprehensive legal analysis of the program was “troubling” because of the “uniquely expansive” use of DEA’s subpoena authorities to collect bulk data without a prior finding that the data was “relevant or material.” The OIG also noted that “several published court decisions have clearly suggested potential challenges to the validity of DEA’s use of its statutory subpoena power in this expansive, non-targeted manner.” There were also “significant legal questions” posed by the use of the data by other federal agencies in non-drug related investigations.

- A.** When were you read into or otherwise became familiar with the DEA bulk collection program?

I do not recall if I was made aware of the DEA bulk data collection program while I was in government service. If I did learn about it, I have no recollection at this point.

- B.** Did you take any steps to ensure that the program was subject to a comprehensive legal analysis?

See answer above.

- C.** Did you have any concerns about the program or its legality and, if so, what steps did you take to address those concerns, within the government or with Congress?

See answer above.

Declassification/transparency

QUESTION 8: You served on the Public Interest Declassification Board (PIDB) from 2013-2017.

- A.** Based on this experience, please describe your views on declassification reform.

I was honored to serve as a member of the Public Interest Declassification Board (PIDB) from 2013-2020. The mission of the PIDB is to promote the declassification of government information that is of public interest and sheds light on government operations. After a 21-year stint of service in the federal government – some of which included involvement in classified national security operations – I was acutely aware of the problem of over classification of

government information. For a variety of procedural, legal, and cultural reasons, certain types of government records – in particular, those relating to national security operations -- are routinely classified and kept from public view, even when there is no operational need for their secrecy. That lack of transparency denies the American people the ability to see what the government is doing in their name, which can in turn undermine their trust in government. I was always troubled by this problem of over classification and was therefore happy to accept the offer to serve as a member on the PIDB and advocate for enhanced transparency.

- B.** Are there any particular subjects or areas you believe are currently overclassified? If so, please describe them.

Despite the strong efforts of the PIDB and other groups devoted to government transparency, declassification reform still has a long way to go. There are a variety of available programs for automated declassification, but it will take a significant commitment of government effort and resources to deploy any of these programs on a scale that will result in a meaningful reduction in the amount of information that remains classified.

QUESTION 9: On May 27, 2021, former government officials, including former DNI Clapper, former CIA Director Brennan and former ODNI General Counsel Litt, submitted an *amicus curiae* briefing in support of the petitioner in *ACLU v. U.S.* In their brief, the former officials argued for a qualified right of public access to FISA Court opinions that address significant and novel issues.

- A.** Do you agree with the reasoning of the *amici's* briefing?

I have read the *amicus curiae* briefing submitted in the *ACLU v. U.S.* litigation that this question references, and I have great respect for the former government officials who signed the brief. Without taking a specific position on the litigation, I am sympathetic with their concern about the consequences of inordinate secrecy around the FISA process.

- B.** Do you agree with those former officials that the excessive secrecy that accompanied post-September 11 surveillance efforts contributed to the conditions that gave rise to leaks?

I agree that excessive secrecy surrounding the government's surveillance operations has contributed to the conditions that give rise to greater leaking of government information, especially in the aftermath of 9/11.

- C. Do you believe there were particular FISA Court opinions that should have been released at the time? If yes, please identify them.

During my service in the FBI and the National Security Division, I developed great respect for the FISA Court judges and attorneys and their devotion to the rule of law. For a variety of historical reasons over the past two decades, however, the operations of the FISA Court have become a subject of public questions and concerns, which have all too often remained unaddressed due to the classified nature of the FISA process. In the interest of addressing those questions and concerns and enhancing public confidence in the FISA process, I agree with those who urge the release of those FISA Court documents, or redacted versions thereof, that can help to explain the Court's decisions and their legal rationale without compromising national security. This is particularly true with those FISA Court decisions on broad legal issues, like those relating to the NSA telephony metadata program, that raise overarching constitutional and privacy concerns.

SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE



Post-hearing Questions for

**Mr. Kenneth Wainstein upon his nomination to be the
Under Secretary for Intelligence and Analysis,
Department of Homeland Security**

[From Vice Chairman Rubio]

- I. In May 2021, Secretary Mayorkas announced a “new, dedicated domestic terrorism branch within the Department’s Office of Intelligence & Analysis (I&A) to ensure DHS develops the expertise necessary to produce the sound, timely intelligence needed to combat threats posed by domestic terrorism and targeted violence.”

Recently, I&A issued a two-page unclassified assessment ahead of the January 6 anniversary. Parts of the assessment recite the circumstances surrounding the January 6, 2021 chaos and lawlessness at the Capitol and another part refers to media reports indicating that some groups had applied for permits to demonstrate on the anniversary.

The assessment – apparently widely accessed by the media – generally noted that there was not a specific or credible threat on January 6, 2022. An unclassified “For Official Use Only” IC product widely accessed by the media – yet not actually available to the public – circularly citing media reports to support the assessment, is arguably inherently not the “sound, timely intelligence” Secretary Mayorkas presumes of the I&A domestic terrorism branch.

a. Are you familiar with this product?

While I have not seen the product, I am generally aware of it based on media reporting. I have no knowledge about the sources that informed the analysis in the product or the decision-making process behind its issuance.

b. Do you think this type of product useful? If so, to whom?

As stated in my answer to Question a above, I have not seen the product, so I am unable to assess the value of the product or the soundness of its sources. With that said, I know that there is often concern that the anniversary of an infamous violent event – such as the Oklahoma City bombing or the 9/11 attacks – might inspire other violent acts. This type of product could presumably be useful to law enforcement agencies at all levels of government that are on the front lines of protecting facilities and individuals that could be targeted by violent actors upon such an anniversary. Conversely, if the analysis suggests that anniversary-style threats are not anticipated, such products could be useful for state, local, and other law enforcement actors that are making resource allocations based on their assessment of the existence and severity of a potential threat.

With that said, it is important in generating such an intelligence product to recognize the possibility of press attention and ensure that it is phrased in a measured way that mitigates the possibility the press could amplify it in a manner that is inconsistent with its analytical conclusions. It is furthermore critically important that I&A, like every IC component, regularly evaluate the utility of its intelligence products. If confirmed, I will examine whether there are robust consumer feedback mechanisms in place to measure and improve the utility of I&A’s products. I will also examine

how products are distributed to protect them as much as possible from improper disclosure.

c. What would you assess the value to I&A's customers to be?

I have not reviewed this product so I cannot assess its value. Moreover, I am not privy to any of the preceding requests made to I&A from their partners, so I cannot evaluate whether this specific product was a response to such requests and whether it satisfied the intelligence needs behind those requests. With that said, if confirmed, I commit to examining this episode in my effort to ensure that I&A's products provide actionable intelligence and are responsive to its customers' needs.

d. If confirmed, what is your vision for the I&A domestic terrorism branch?

I understand that the domestic terrorism branch was established last year, consists of a small group of analysts within the Counterterrorism Mission Center at I&A, and is focused on strategic intelligence analysis of the domestic violent extremism threat. Given the current threat landscape and DHS's statutory mission as it relates to terrorism, I think it makes sense for I&A to focus on such analysis that provides customers – especially their state, local, territorial, tribal and private sector partners – with a strategic understanding of the threat, the tactics used by these threat actors, and the motivations behind their actions. If confirmed, I will assess how I&A is currently producing intelligence on this topic and seek feedback from I&A's customers to identify where I&A can address intelligence gaps and better produce sound, timely intelligence in a manner that is appropriate and consistent with the protection of the privacy and civil liberties of individual Americans.

e. How does the I&A domestic terrorism branch differ from the domestic terrorism work of the FBI and the Department of Justice's new "Domestic Terrorism Unit"?

I understand that I&A's domestic terrorism branch is focused on intelligence analysis and the sharing of that analysis with federal, state, local, tribal, territorial, and private sector partners. By contrast, the domestic terrorism work of the FBI is primarily focused on investigating acts of domestic terrorism, and the new domestic terrorism unit at DOJ is apparently focused on prosecuting those domestic terrorism crimes investigated by federal law enforcement agencies like the FBI. If confirmed, I would work to ensure that both Departments stay coordinated as appropriate on these issues so that unnecessary duplication is avoided and their efforts are complementary.

2. Your views on the contribution of DHS I&A and what role you believe it has played – or should play – in the Intelligence Community and the authorities under which it operates are important to understanding how it will be managed under your leadership, should you be confirmed.

a. In your view, when is I&A most impactful?

I believe I&A is most impactful when it provides quality and timely intelligence to DHS leadership and serves as an effective intelligence conduit between the federal government and its, state, local, tribal, territorial, and private sector partners.

b. What critical function does I&A perform that other Intelligence Community elements, such as the FBI, for example, cannot or will not do?

Unlike other Intelligence Community elements, I&A is statutorily required to work across government at all levels and with the private sector to conduct intelligence activities supporting both national and departmental missions. I&A integrates intelligence into operations across DHS components, its partners in state and local government and the private sector to identify, mitigate and respond to threats. This mission is unlike that of the FBI, which is charged with the domestic law enforcement mission for terrorism and counterintelligence and, in my experience, focuses more on investigation than on information sharing.

c. Why is I&A necessary?

The Department of Homeland Security was created following the terrorist attacks of 9/11 to protect our borders from national security threats, to secure modes of transportation and critical infrastructure, and to partner with government at all levels and the private sector to strengthen sharing of information and intelligence. That mission could only be accomplished if there was an entity within DHS that could serve as the driving force behind this intelligence sharing. I&A provides that driving force. It was established to improve the coordination, sharing, and analysis of information and intelligence across all levels of government; to ensure inclusion of DHS needs in the U.S. Intelligence Community's determination of the nation's intelligence collection priorities; to analyze the intelligence-related information already being collected by DHS; and to facilitate greater access to and cross-mission coordination of information collected by federal, state, and local intelligence, law enforcement, and other agencies.

d. Does I&A have a role in monitoring the activities of U.S. persons? If so, what is that role, under what circumstances, and under what authorities?

The vigorous protection of privacy, and civil rights and civil liberties of U.S. persons is paramount to I&A's success as a member of the U.S. Intelligence Community. I understand that I&A can collect and analyze information on U.S. persons pursuant to statute, including the Homeland Security Act of 2002, only under very limited, prescribed conditions. I&A is limited to intelligence activities in support of national and departmental missions, and its collection activities are limited to information collected overtly or through publicly available sources. I&A is further prohibited from conducting intelligence activities regarding U.S. persons solely for the purpose of monitoring activities protected by the First Amendment. Finally, I&A's

intelligence oversight guidelines allow for collection of U.S. person information only where there is a reasonable belief of a nexus between the subject and one or more of I&A's defined collection categories that support a national or departmental mission (such as terrorism information, counterintelligence, or cybersecurity), and where the information is necessary for the conduct of an authorized I&A mission.

e. Does DHS I&A monitor the social media activity of U.S. persons? If so, under what authorities?

As I understand it, I&A can collect specific information on U.S. persons from publicly available social media pursuant to Title II of the Homeland Security Act of 2002, as amended, which authorizes I&A to "integrate relevant information, analysis, and vulnerability assessments" to address threats to homeland security. However, that collection must be strictly in support of specified national and departmental missions and keep to the limitations summarized in my answer to the previous question.

If confirmed, I will ensure that all activities conducted by I&A are done in a manner that is protective of privacy, and civil rights and civil liberties. I will work very closely with the DHS Office of Civil Rights and Civil Liberties (CRCL) and the DHS Chief Privacy Officer. I will ensure that the CRCL and the Chief Privacy Officer are appropriately consulted and empowered in their critical oversight role. In addition, I commit to working closely with members of this Committee, as well as critical stakeholders outside the Department, to understand and address concerns relating to privacy and civil rights and civil liberties.

f. How do you view the threat to the homeland from domestic groups (mostly comprised of U.S. persons) lacking a clear foreign nexus? Is it greater than the other threats we face including from Islamic terrorism, homegrown violent extremism (inspired by foreign terrorists), and other threats like narcoterrorism?

From my awareness as a private citizen, I understand that the current threat from domestic violent extremists is significant. In May 2021, DHS and the FBI provided to this Committee a congressionally mandated Strategic Intelligence Assessment and Data on Domestic Terrorism report. This report concluded that the greatest terrorism threat we currently face is from lone offenders, often self-radicalized online, who attack soft targets with easily accessible weapons.

At the same time, we are facing a myriad of significant threats that have a foreign nexus, including from Islamic terrorism, foreign-inspired homegrown extremists, narcoterrorists, nation-states such as China and Russia, malicious cyber actors and transnational criminal organizations. It is clear, for example, that attacks directed or inspired by foreign terrorist organizations of the type we saw at Fort Hood and San Bernardino remain a top homeland security threat that the Department must vigilantly defend against.

If confirmed, I will ensure that I&A continues to enhance its ability to analyze, produce, and disseminate products that address all threats to the Homeland and that it does not get tunnel vision on one threat at the expense of paying attention to all the others.

3. In questions you answered for this Committee prior to your confirmation hearing you noted that, “The Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004 redefined the National Foreign Intelligence Program as the National Intelligence Program and established a new definition of ‘national intelligence’ in statute.” While this is certainly true, the IRTPA did not change the definition of “intelligence” in Title 50, which remains the same today: “The term ‘intelligence’ includes foreign intelligence and counterintelligence.”

a. Do you believe that intelligence, as defined in Title 50 Section 3003, encompasses anything beyond foreign intelligence and counterintelligence (as also defined in Title 50, Section 3003)? If so, what else does this definition encompass?

As you note in your question, the National Security Act of 1947 specifies that the term “intelligence” *includes* foreign intelligence and counterintelligence; however, it is my understanding that the use of the word “includes” in a statute typically connotes that the items that follow constitute a less than exhaustive list of the items that are covered by that provision. (As a relevant example, the oversight provision of the National Security Act which requires that Congress be kept fully and currently informed of “intelligence activities” specifies only that intelligence activities “include” covert actions and financial intelligence activities, but it is widely understood that agencies’ responsibility to inform Congress extends well beyond those two categories.) As such, that definition of “intelligence” in Section 3003 may well encompass activities beyond the two listed in the statute.

With that said, if confirmed, I would seek to work closely and proactively with your committee, and with agency and Department counsel, to ensure I&A’s intelligence activities comport with Congressional intent and that funding is used only for authorized activities, while ensuring that I&A has the resources and authorities needed to produce timely, actionable intelligence regarding current and evolving threats, consistent with its mission.

b. Is there a difference between “national intelligence” and “intelligence,” or are they one in the same?

As you note in your previous question, the Intelligence Reform and Terrorism Prevention Act of 2004 added a definition of “national intelligence” to the National Security Act of 1947, stating that the term “national intelligence” refers to “all intelligence, regardless of the source from which derived and including information gathered within or outside the United States, that (A) pertains, as determined

consistent with any guidance issued by the President, to more than one United States Government agency; and (B) that involves (i) threats to the United States, its people, property, or interests; (ii) the development, proliferation, or use of weapons of mass destruction; or (iii) any other matter bearing on United States national or homeland security.” However, that definition did not replace the existing definition of “intelligence” in Title 50, Section 3003. My understanding is that Congress’s intent in creating this new definition was to make clear that homeland security is a part of our national intelligence effort. With that said, the law and the Constitution place stricter limits on the domestic collection on U.S. persons than on foreign intelligence collection. To the extent that I&A collects such domestic information, those stricter limits must be scrupulously respected – and on my watch they will be scrupulously respected -- regardless which definition of “intelligence” is applied to its operations. As noted above, my mission if confirmed will be to ensure that I&A is operating effectively, lawfully and with full respect for privacy and civil liberties. I look forward to working with you and this Committee in our joint pursuit of that mission.

4. You noted that, “National intelligence includes all intelligence, regardless of source, that pertains to United States homeland security.” Other components of the Department of Homeland Security, such as Customs and Border Protection and the Federal Emergency Management Agency, and U.S. Customs and Immigration Services, for example, collect “intelligence.” While they are not members of the Intelligence Community, the information these agencies collect pertains to homeland security.

a. Is the information that these non-Title 50 entities collect considered “national intelligence,” and therefore within the jurisdiction of the House and Senate Committees on Intelligence?

I am certainly no expert on Congressional jurisdiction and will defer to Congress as to which Committees have jurisdiction over specific activities. I certainly believe, however, that some information originally collected by the components you listed as part of their non-intelligence community mission sets (for example, law enforcement, border security, and criminal investigations) could serve a “national intelligence” purpose if shared with I&A. It is my understanding that such information, when shared with I&A, is handled in a manner consistent with the authorities provided by Congress and the Attorney General-approved intelligence oversight guidelines. If confirmed, I pledge to keep the congressional intelligence committees fully and currently informed of all I&A intelligence activities, including its receipt and use of intelligence from fellow DHS components.

5. In your responses to the Committee’s questions, you stated that I&A and FBI “must be complementary and supportive of each other’s respective missions” and “work together to maximize the intelligence support we provide to law enforcement personnel throughout the country.” There remains the concern, however, with potential redundancy in efforts and resources used by DHS and FBI, especially regarding violent extremism.

a. If confirmed, how do you plan to address any overlap in DHS's and FBI's efforts and resources used to counter violent extremism?

Violent extremism presents a persistent and evolving threat to the U.S. homeland. If confirmed, I will ensure that I&A's capabilities related to countering violent extremism are used to meet the intelligence needs of I&A's customers, including the FBI, and that FBI's work on this topic supports our mission. As I understand it, I&A's production is tailored to threats that impact homeland security, and is designed for distribution to a broad customer base that requires production of intelligence at all levels of classification. If confirmed, I will work with the FBI to ensure that I&A's coordination with the FBI serves to bolster, and not unnecessarily duplicate, their efforts in the violent extremism space.

b. If confirmed, how will you ensure that I&A's role in countering violent extremism remains unique to I&A, and does not utilize National Intelligence Program resources for broader DHS components?

If confirmed, it will be my responsibility to ensure that funds appropriated to I&A by Congress are used only for activities authorized by statute. I&A plays a vital role in countering violent extremism by providing timely and actionable intelligence and information to policymakers and state and local partners at the lowest classification level possible. This includes generating intelligence products that provide situational awareness into evolving threats and help to inform the public safety, counterterrorism and security planning efforts of I&A's partners and fellow DHS components.

If confirmed, I will monitor I&A's operations to ensure that its efforts in this space are clearly in support of I&A's authorized activities and do not extend to purposes outside of its scope of authority.

6. Looking forward to your potential new role as Under Secretary for Intelligence and Analysis, what are the counterterrorism or other implications for U.S. national security due to the nature and circumstances surrounding the U.S. withdrawal from Afghanistan?

The long-term implications of the withdrawal of the United States from Afghanistan and subsequent fall of the Afghan government are still unknown. One concern is that the significant reduction of U.S. personnel in Afghanistan reduces our intelligence-collection capabilities in that country. Another overriding concern is that a Taliban-controlled Afghanistan could become a safe haven for foreign terrorists and a base for attack planning against the U.S. and our allies. As I understand from news reports, even though Al-Qaeda and ISIS have been diminished by longstanding pressure, their networks and affiliates have persisted. With the opportunity to establish a safe haven in Afghanistan, there is the danger that Al Qaeda and maybe even ISIS could develop into a more sustained, entrenched and dangerous terrorist threat. If confirmed, I will seek regular and detailed briefings and analysis on this topic and will ensure that I&A is doing its part in the broader all-of-government effort to prevent that from happening.

7. Is the homeland more or less safe following the U.S. withdrawal from Afghanistan?

As a private citizen, I do not have access to existing intelligence or any threat streams emanating from Afghanistan. Based on my analysis from public reports, it is clear that the security situation with respect to Afghanistan remains complex.

On one hand, ending the nearly two decades of U.S. troop presence and security investments in Afghanistan frees up resources for the U.S. to address aggression from China, Russia and other critical national security threats. On the other hand, the collapse of the Afghan government and our withdrawal of forces from the country likely reduces our ability to collect intelligence on the ground and raises the specter of Afghanistan being used as a base for terrorist attacks against us and our allies.

As explained above, we must be vigilant to ensure that Taliban control in Afghanistan does not result in the establishment of a terrorist safe haven. To that end, we must do everything possible to support the President's call for an over-the-horizon capability that will allow the United States and its partners to work together to suppress the terrorism threat in Afghanistan, just as we apparently have been doing in Syria, Yemen, Somalia, Libya, the Islamic Maghreb and other places around the world.

If confirmed, I will work tirelessly to ensure that I&A and the Department increases its ability to implement its multi-layered screening and vetting architecture to prevent terrorists and other bad actors from traveling to the U.S. by air, land and sea. Moreover, I will seek to ensure that I&A provides its customers with timely and actionable intelligence on all homeland security threats.

8. On December 11, 2021, Yahoo News published a story titled, "Operation Whistle Pig: Inside the secret CBP unit with no rules that investigates Americans." The story detailed how a CBP employee "used the country's most sensitive databases to obtain the travel records and financial and personal information of journalists, government officials, congressional members and their staff, NGO workers and others." One of I&A's missions is to "deliver access to data and systems, infrastructure and analytic expertise, mission readiness services and Intelligence Community (IC) capabilities to DHS Operational Components." While members of this Committee do not know whether I&A maintains the various databases this CBP employee reportedly accessed, given its mission it is possible that it does.

- a. If it is revealed that I&A – an IC element funded entirely with intelligence funds – maintains these databases that were used to improperly collect information on American citizens, what corrective actions will you take to prevent this abuse from recurring?**

I'm seeking to return to government service because of my commitment to protecting our national security and our values, which includes respect for the civil rights and civil liberties of my fellow Americans. As a private citizen with access only to public

information, it is not clear to me what role, if any, I&A or its resources played in Operation Whistle Pig. If confirmed, I will look into this specific incident to determine whether I&A resources were involved. I will also carefully examine how I&A manages data generally to ensure its practices are compliant with law and policy. If I identify any improper activities, I will immediately take action to stop them and put in place all necessary additional procedures. I will also work with the Congressional intelligence committees to ensure they fully understand and are comfortable with I&A's data retention practices.

9. During your confirmation hearing, you agreed with the need to prevent even the appearance of impropriety on the part of the Intelligence Community so as to protect the IC's important collection tools.

a. Does it concern you that an IC element funded entirely with intelligence funds delivers access to data and systems, infrastructure and analytic expertise, mission readiness services and IC capabilities to DHS Operational components such as CBP and USCIS? Should this activity be paid for outside of the IC?

As noted above, as a private citizen, I have limited information regarding how I&A currently supports the operational components of DHS. With that said, my understanding is that one of I&A's core missions is to be a service provider not only to its state and local partners, but also to its fellow DHS components. For example, I&A is responsible for ensuring that a CBP officer encountering a foreign national at a port of entry has appropriate access to intelligence community information about that individual to inform that officer's screening and entry decisions in support of the agency's border security mission. As another example, I&A supports the Department's Cybersecurity and Infrastructure Security Agency by providing its operators access to some of the Intelligence Community's most sensitive intelligence to inform and equip that agency to carry out operational activities that protect U.S. critical infrastructure from cyber attacks. In my view, this type of intelligence support is critical to DHS's ability to effectively protect our Homeland from national security threats. With that said, I am agnostic as to how these programs should be funded and would defer to the Congress on that issue. If confirmed, I will work with the appropriate authorizing and appropriating committees in Congress to ensure that the activities conducted by I&A are authorized and funded in a manner that Congress considers appropriate.

10. During your confirmation hearing, you noted that "there are clear guidelines about what DHS I&A can and cannot do so for example, they can only collect information and distribute it if it's relevant to a departmental mission like protecting against terrorism." Safeguarding the homeland against terrorism is one of the missions of the Department of Homeland Security, but there are many others to include securing U.S. borders, managing the immigration process, preserving and upholding the country's prosperity, and strengthening preparedness and resilience across the country.

a. Can I&A collect information on U.S. persons and distribute it if it is relevant to any of the missions cited above, which DHS has noted on its website as some of its missions?

I&A's responsibility to respect Americans' right to privacy, including by safeguarding U.S. persons' information against inappropriate collection, is paramount to maintaining public trust in I&A. The response during my confirmation hearing was meant to serve as an example of one of the limitations on I&A's authority to collect information, not a comprehensive listing of all the conditions I&A must meet in order to collect intelligence.

If confirmed I will quickly gain a full understanding of the current Intelligence Oversight guidelines and other relevant policies which also govern collection on U.S. persons, and will work with this committee and stakeholders to address perceived or real gaps in civil rights and civil liberties protections. It is my view that such guidelines ought to be revisited regularly to ensure that agencies' activities live up to their responsibilities under the law, while supporting robust collection and analysis within the confines of the law in order to develop timely, actionable intelligence that provides the best information to policymakers and those on the front lines.

b. If not, will I&A differentiate which missions it can engage on, and which ones it cannot, if you are confirmed?

Yes, I&A will make that differentiation on an ongoing basis if I am confirmed. In doing so, it will refer to its authorized missions, as well as to other practical considerations, such as resource limitations, existing commitments, and whether I&A or another agency is best positioned to produce timely and actionable intelligence in any particular mission space.

11. Since leaving government service in 2009, you have been employed as a Partner at three major international law firms. As a Partner, have you ever declined a client or to engage in work on behalf of the firm's client for any reason other than a legal conflict? If so, when and for what reason?

Throughout my 13 years in private practice, I have met or consulted with scores of potential clients, and there have been many occasions when I opted not to represent certain individuals or entities. Aside from financial considerations, there have been a variety of reasons for those decisions. Those reasons have included, among others, my assessment of the client's character, of our personal compatibility, of the nature of the client's work, or of the likelihood that the representation will ultimately require me to take a position that does not align with my values and principles.

That assessment varies greatly depending on the specific task(s) that the potential representation would require of me, and the extent to which it will require me to advocate and stand behind the client and/or the client's conduct. If I am asked to perform a non-advocacy role – such as, for example, simply conducting and reporting out an investigation

into certain conduct – the assessment is different than if I am asked to advocate on behalf of the client and defend that client’s conduct.

12. How do you assess the harm done to U.S. interests, if any – and however unintentionally – of American capital at the disposal of Chinese state-owned enterprises? What about American capital at the disposal of “private” companies in China?

As we all understand, American investment in Chinese companies has proven to be a double-edged sword. A decade or two ago, there was hope that increased integration and investment between western economies and the Chinese economy would serve to bring China closer into the world order and encourage more economic and political liberalization on the part of the Chinese government. As we discussed at my confirmation hearing, however, the conduct of the Chinese Communist Party (CCP) over recent years has shown that hope to be more illusory than real. Based on the CCP’s continuing political repression and human rights violations, and its often lawless and zero-sum approach to international economic competition, there is dwindling reason to expect that we will see that hoped-for liberalization, at least not in the near future.

State-owned enterprises are at times used by the CCP to promote those practices and policies and to take actions that are contrary to U.S. national and economic security interests. As such, American companies and investors must think carefully before any involvement in the Chinese economy to ensure that their involvement does not encourage or facilitate the CCP’s ability to engage in such conduct. As I committed during my confirmation hearing, I will not work for any CCP-affiliated enterprises after my time in government, if confirmed.

If confirmed, I believe there is more work I&A could do in this space through its Economic Security Mission Center and its responsibility to share CCP-related intelligence with our private sector partners.

13. You have disclosed a financial interest in a number of China-based companies, including Alibaba Group.

a. These are individual shares, correct?

Yes, I disclosed in my financial disclosure form that I had individual shares of the Alibaba Group, as well as several other Chinese companies, as part of a diverse portfolio of holdings that includes shares of stocks in companies located in a number of countries.

b. If so, why did you decide to invest in individuals shares of China-based companies?

Although I recognize that I am fully responsible for my stock holdings, my wife and I did not make a conscious decision to invest in China-based companies. To the extent that any China-based company stocks are in our portfolio, that is due to (1) our

financial advisers making the decision to invest in those companies (these are managed accounts in which the financial advisers buy and sell stocks without consulting us, and I have historically paid virtually no attention to the particular stocks in our portfolio) or (2) our having received such holdings as part of an inheritance that we received and that has been going through probate since late 2020.

There are several points about those holdings that I'd like to emphasize. First, we have now instructed our financial advisers to no longer purchase any stocks of China-based companies. Second, last year I made the decision as trustee to sell off any inherited stocks of all Chinese companies; that decision was carried out and they were sold in the summer of 2021. And finally, all stocks in foreign companies will be sold - and the proceeds invested in diversified mutual funds -- upon my confirmation in accordance with the ethics agreement that I entered into with the Department of Homeland Security.

14. Do you commit to providing this committee your viewpoint on intelligence matters, even if your views may differ from others in the administration?

I commit to keep the Committee fully and currently informed about all intelligence activities and analysis on the part of the Office of Intelligence and Analysis. Pursuant to that commitment, I will provide the Committee my view on intelligence matters, no matter how much that view does or does not align with the views of others in the Administration.

[From Senator Wyden]

1. On February 26, 2002, when you served as the Director of the Executive Office for U.S. Attorneys at the Department of Justice, you sent a memo to the Attorney General regarding the Interview Project. The Project entailed the identification of approximately 5,000 non-immigrant aliens who came from countries "which have an Al Qaeda terrorist presence," among other criteria, of whom about half were interviewed. The memo stated that "very few arrests were made in connection with the interviews," and that those arrests were not connected to terrorism. It further stated that "most of the interviewees had no information relating to specific terrorists or terrorist attacks," but "some provided leads that may assist" in counterterrorism investigations. Finally, the memo acknowledged that the Project's success in disrupting terrorism was "impossible to measure."

a. What lessons do you take from this experience, in terms of efficacy of counterterrorism measures and the risks of profiling?

Please see Question 1b below.

b. Do you see the Interview Project as a model for future intelligence or law enforcement responses to terrorist attacks or other threats to the homeland?

The Interview Project was initiated by the Attorney General in the immediate aftermath of the 9/11 attacks, and it had two general purposes. It was first and foremost an attempt to solicit intelligence from those persons and communities that had a connection to the countries where Al Qaeda had a presence, on the theory that those persons might have information about potential terrorism-related activity that could help to prevent another “second-wave” terrorist attack. It was also seen as a means of enhancing the operational relationship and coordination between the federal government and its state and local partners in the counterterrorism effort. It was thought that teaming federal personnel and their state and local counterparts in this project would lay the groundwork for the enhanced and more regularized coordination between them that would be necessary for a national counterterrorism effort.

The Executive Office for United States Attorneys was tasked with providing guidance to the Anti-Terrorism Task Forces, which were the United States Attorney-led groups of federal, state and local authorities in each federal district that were assigned to conduct the interviews in that district. My colleagues and I drafted that guidance to ensure that the interviews were conducted in a proper and respectful manner and in full compliance with all laws and constitutional rights and to prevent the interview project from being – or being seen as – an effort to target law enforcement attention and resources against persons from a particular religion or region of the world.

It is difficult to assess the efficacy of the project as to the two objectives described in the first paragraph above in any concrete manner. While hazy after 20 years, my memory is that the project was somewhat helpful as a mechanism for building and exercising federal/state and local coordination but, as quoted above, did not generate much, if any, intelligence of true operational significance. Given that limited intelligence yield, it is a fair question whether the coordination and intelligence benefits of the program justified the heightened profiling concerns that it generated among some in the targeted communities, which already had an understandable feeling of increased vulnerability in the aftermath of 9/11.

It is also a fair question whether such a program should serve as a model in response to future attacks. Given that so much progress has been made in the relationship between federal homeland security entities and their state and local counterparts in the 20 years since 9/11 (albeit there remains much more progress to be made), there would arguably be less need for such a coordinating mechanism to mobilize and energize the federal/state and local operational relationship after a future terrorist attack.

As I have stated previously during this process, we can only be an effective organization if we are able to maintain the public’s trust. It is my understanding that as a matter of policy, I&A personnel are not permitted to engage in intelligence

activities based solely on an individual's or group's race, ethnicity, gender, religion, sexual orientation, gender identity, country of birth, or nationality. If confirmed, I would work closely with the DHS Office of Civil Rights and Civil Liberties and the oversight mechanisms at I&A to ensure that this policy is faithfully and consistently followed at I&A.

2. On May 2, 2006, during your confirmation to be Assistant Attorney General, National Security Division, you testified with regard to the legality of the President's Surveillance Program (the warrantless wiretapping program also known as Stellar Wind). You stated that "I have found the 42-page white paper that was submitted by the [Bush] administration to provide a fairly compelling justification for the program." You were also asked whether you agreed with the administration that the 2001 Authorization for Use of Military Force (AUMF) justified the program. You responded that the authority to detain individuals under the AUMF "seemed to be an analogous situation and it seemed to apply here."

a. Is it still your opinion that the arguments in favor of the program in the white paper are compelling?

Please see question 2b below.

b. Do you still believe that the AUMF provides a legal basis for conducting surveillance or other collection that would otherwise be governed by FISA? How does the passage of the "exclusive means" legislation (50 U.S.C. § 1812) affect your views?

As we discussed previously, I had no involvement in the development of the President's Surveillance Program or of its legal justification. I did not assist with drafting the white paper or of any other legal guidance at DOJ justifying the legal reasons supporting the program. By the time of my confirmation process for the position of Assistant Attorney General for National Security, the existence of the program had been publicly disclosed and the Justice Department had issued a white paper explaining its conclusion that the President had the authority to conduct this surveillance program outside the authority of the FISA Court.

As you note above, in my confirmation hearing in May 2006, I was asked by Senator Feingold about my opinion of the arguments in the white paper. Having reviewed the white paper, I told Senator Feingold that I felt it provided justifications for the program. However, I made clear that at the same time I had not reached my own definitive opinion on the legality of those justifications. I "ha[d] not gone beyond to look at the back-up materials, to look at the case law, read the cases cited [and] the variety of position papers that are at odds with [the white paper]" and had not "really noodled through it as I would before I felt comfortable as a responsible lawyer rendering an opinion on something." I further told Senator Feingold that upon confirmation to the AAG position, I would "take a look at the law and if I have an

opinion about the law and the legal justification for the program, I will voice that opinion.”

I did, in fact, take a hard look at the law and the mechanics of the program once I joined the National Security Division in September 2006, and I voiced the opinion that the program should come to an end. My colleagues and I then worked with the Office of Legal Counsel to develop the legal theory and the filings to bring any continuing surveillances under FISA Court authority. In January 2007, within months of our start at NSD, the program as it existed outside of FISA Court authorization came to an end.

The legal arguments in the white paper were never fully tested in the courts before we ended the program. However, as you point out above, the legal AUMF argument – that was already quite an aggressive argument – would seemingly be foreclosed if made today, given how the FISA Amendments Act of 2008 tightened up the “exclusive means” provision to require an express statutory authorization before any new legislation could be used to justify surveillance outside the specified laws. With that provision, Congress has made perfectly clear its intent to limit the Executive’s ability to operate outside the requirements of FISA.

As we discussed at length at the hearing and during our courtesy visit in regard to the 215 telephone metadata program, the legal analysis is only one element of the decision making process before the implementation of a surveillance program. The other element is whether that program, no matter whether technically lawful or not, is something that meets the civil liberties expectations of Congress and the American people. As with the 215 telephone metadata program, the warrantless wiretapping program was never measured against those expectations, and it should have been. Instead, it was classified at such a high level that its existence was kept from the American people and most of Congress until it was leaked to the press and became a matter of understandable controversy and concern over secret unilateral intelligence action by the executive branch. In hindsight, we should have done more to ensure that the American public better understood how the legal framework of FISA was being interpreted and used from both a national security and civil liberties perspective.

This episode – like the 215 telephone metadata episode – provided an object lesson about the need to maximize transparency and deliberation around our government’s surveillance operations. That is the lesson that animated my efforts to advance issues of declassification as a member of the Public Interest Declassification Board in private practice, and that will encourage me to urge transparency over secrecy whenever humanly possible if I am confirmed to return to public service in this role.

3. As we have discussed, in September 2009 you testified that FISA Court orders under “Section 215 [are] significantly more protective of civil liberties than grand jury subpoenas,” and that, if the government wanted to collect information about “an

obviously innocent day to day interaction, I think you're going to have some questions from the FISA court judge."

However, you have acknowledged that during your previous government service you were aware that the executive branch was secretly using Section 215 orders to obtain bulk phone metadata, including records of the innocent day to day interactions of millions of Americans. You were aware of how broadly the law had been secretly interpreted, and neither you nor any other witness at that 2009 hearing suggested that Section 215 could be used in this way.

Information about this massive bulk collection was available to members of Congress who knew how to ask for it. However, any members of the public who listened to your testimony would have received a grossly inaccurate impression of how U.S. surveillance law had been interpreted.

a. Do you genuinely not believe that your 2009 testimony was misleading? If you believe that it was misleading, do you regret that?

As we have discussed, it certainly was not my intention to be in any way misleading with my comments about the 215 authority during my 2009 testimony. I believed, and still believe, that from a process standpoint, it is always more protective to require judicial review and approval before issuing investigative process than to leave it up to the prosecutor's unilateral discretion, as happens in the grand jury subpoena context. My testimony on that point was consistent with the testimony of the then-Assistant Attorney General for National Security from the Obama Administration at the same hearing. Additionally, the Assistant Attorney General's statement for the record expressly acknowledged that 215 was being used to support a highly sensitive collection program and offered a briefing thereon to any Members.

As you point out, however, that reference and offer did not and could not remedy the incomplete understanding of the American public about the government's use of Section 215 for the collection of bulk data. I regret that our testimony that day contributed in any way to that incomplete understanding, and that in general we did not do more to inform the public about this and other classified programs that impacted the civil liberties of American in the aftermath of 9/11. As I have said, in retrospect, I agree that more could have – and should have – been disclosed about the 215 telephone bulk metadata program without doing any real damage to our national security.

Like the warrantless wiretapping episode referenced above, the 215 telephone bulk metadata episode provided us all an important lesson – a lesson that transparency advocates like yourself have constructively helped to elevate within the policymaking establishment and within the American consciousness. As I said above, that is the lesson that motivated my service on the Public Interest Declassification Board, and it is one that I will draw upon actively if I am confirmed by this Committee to return to work in the classified operations of the U.S. government.

4. During your hearing, you were asked about I&A's use of "dossiers" (also known as Operational Background Reports, or OBRs). You stated that there were clear guidelines governing DHS activities. Please elaborate on your understanding of the guidelines, how they apply to OBRs, and whether you believe those guidelines should be modified. Specifically, do the guidelines permit and should they permit I&A to include in OBRs:

a. U.S. persons' First Amendment-protected speech and on-line activity;

I understand that I&A personnel are prohibited under all circumstances from engaging in any intelligence activities for the sole purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States. So, in my view, there would have to be some other clear purpose, tied to an authorized intelligence mission, to justify the collection, preparation or dissemination of such an OBR, which is hard to envision in the instance of individuals simply engaging in peaceful online speech. In addition, I note that not all illegal activity rises to the level of a national or departmental intelligence mission, and therefore information on some such activity would not be appropriate to include in an OBR.

b. Information on U.S. persons obtained by DHS through subscription or purchase; and

My understanding is that I&A collection authorities are limited to overt collection methods or collection from publicly available sources. Many publicly available sources that are relevant to I&A's work -- including a wide variety of periodicals, research tools such as LexisNexis, and online media such as newspapers behind a paywall -- are available only by paid subscription. In instances where it is appropriate for I&A to obtain such information through a paid subscription service or database access, I understand that there are important limitations on how I&A handles U.S. person information from these sources. For example, queries must be tailored to minimize the amount of USPI that each query returns; the dissemination of resulting USPI must be limited to those who have an operational need to receive it; and USPI is minimized to reduce the impact on privacy.

If confirmed, I would work very closely with the DHS Privacy Office and the DHS Office for Civil Rights and Civil Liberties. I will also take a close look at the current process and report my findings to the Committee in order to ensure that information sharing is being performed in a manner consistent with Congress's expectations.

c. Information on U.S. persons derived from Department data bases?

As I understand, I&A cannot, as either a legal, procedural or technological matter, simply avail itself of Departmental databases. Beyond that understanding, I am not fully aware of all the rules and regulations regarding I&A's ability to access

information held by other DHS components, but will examine such requirements if confirmed to the Under Secretary position.

With that said, I strongly believe that for I&A to be successful in preparing useful homeland security intelligence analysis for its federal, state, local, tribal, territorial, and private sector partners, it must have some access to information collected by the Department and its stakeholders. Any such access should absolutely be limited by existing intelligence oversight and privacy laws, feedback from Congress, and the privacy and civil liberty requirements set forth by the Department's Office of Privacy and the Office for Civil Right and Civil Liberties. If confirmed, I look forward to working with you and other members of the committee to ensure that DHS I&A strikes an appropriate balance between producing high quality homeland security intelligence analyses and safeguarding Americans' private information.